

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

\* \* \* \* \*

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

Case No. 17-CV-739-JDP

vs.

WAL-MART STORES, INC. and  
WAL-MART STORES EAST, L.P.,

Madison, Wisconsin  
October 7, 2019  
1:25 p.m.

Defendants.

\* \* \* \* \*

STENOGRAPHIC TRANSCRIPT OF FIRST DAY OF JURY TRIAL

**AFTERNOON SESSION**

HELD BEFORE CHIEF JUDGE JAMES D. PETERSON

APPEARANCES:

For the Plaintiff:

U.S. Equal Employment Opportunity Commission  
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Minneapolis, Minnesota 55401

U.S. Equal Employment Opportunity Commission  
BY: CARRIE VANCE  
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Milwaukee, Wisconsin 53203

U.S. Equal Employment Opportunity Commission  
BY: JEAN P. KAMP  
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Chicago, Illinois 60661

Also Present: Roseann Slaght, Guardian  
Amanda Beckerink, Paralegal

CHERYL A. SEEMAN, RMR, CRR  
Federal Court Reporter - U.S. District Court  
120 North Henry Street, Room 410  
Madison, Wisconsin 53703  
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APPEARANCES: (Continued)

For the Defendants:

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 735 North Water Street, Suite 610  
 Milwaukee, Wisconsin 53202

MWH Law Group, LLP  
 BY: WARREN E. BULIOX  
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 Milwaukee, Wisconsin 53202

Also Present: Walmart:  
 Kimberly Royal, In-House Counsel  
 Julie Repka, Corporate Representative  
  
 Tracy Tompkins, Paralegal

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1 (Called to order at 1:25 p.m.)

2 THE COURT: Maybe we can move that over a little  
3 bit.

4 THE CLERK: So they want it angled out a little  
5 bit.

6 THE COURT: So they can see it. If it works for  
7 you, it works for me.

8 MR. BULIOX: We were just talking about angling  
9 towards the jury a little bit.

10 THE COURT: Angle it towards the jury a little  
11 bit. There we go. That should be good. Very good. All  
12 right. Are we ready for the jury? All right. Let's  
13 bring them in.

14 (Jury in at 1:26 p.m.)

15 THE COURT: All right. At this point we are  
16 where we will begin with the opening statements, starting  
17 with the plaintiff.

18 MS. VASICHEK: Hello. I'm Laurie Vasichек. I  
19 work with the EEOC. We're the plaintiffs in this case, as  
20 you've heard. This is a case about how the defendant  
21 Walmart could not see an individual's -- their employee's  
22 abilities because of his disabilities. We're going to be  
23 presenting evidence in this case regarding how Mr. Reina,  
24 Paul Reina, was denied the reasonable accommodation of a  
25 full-time job coach and how Walmart ended his employment

1 because of his disability. So what I'm going to do now is  
2 take you through some of the evidence that we expect to be  
3 introduced during the trial.

4 First, let's start with Paul Reina. Paul Reina  
5 worked at Walmart as a cart pusher. While Paul is an  
6 individual with a disability, he's deaf, he's visually  
7 impaired. He's developmentally disabled. He's on the  
8 autism spectrum. He doesn't speak. He communicates  
9 through a simple sign language with his family and  
10 friends. It's called "home sign." You will hear more  
11 about that.

12 You won't hear directly from Paul in this case, but  
13 you will hear from his foster mother and his guardian,  
14 Rose Slaght, who is in the courtroom now. Roseann and her  
15 husband became Paul's foster parents when he was six years  
16 old. During the entire relationship, she ultimately  
17 became his guardian.

18 At all times Roseann had the goal of having Paul work  
19 in the community to hold community employment. And as a  
20 consequence, he took classes in school and his schooling  
21 was focused on training him how to work out in the  
22 community. The goal was always to make Paul a taxpayer  
23 rather than a tax recipient.

24 He held various positions starting in high school.  
25 He had a certificate of completion from high school. He

1 held various jobs. You'll hear he worked in a laundromat,  
2 he worked in a grocery store, and he currently works as a  
3 newspaper delivery person. You'll see a video in fact, a  
4 short video, showing him doing part of that job.

5 Now, all this time in these jobs, Paul worked with a  
6 job coach. And the job coach was not paid by the  
7 employer; it was paid through different types of public  
8 agencies. You will also hear evidence about the job that  
9 Paul had at Walmart. Paul got this job when he was in  
10 high school. He worked there for 16 and-a-half years,  
11 almost 17 years, and he did the job of a cart pusher.

12 He got this job with the assistance of his high  
13 school program. He was hired in 1998. And he did this  
14 job with the help of a job coach or a job assistant, which  
15 is somebody who can help the person to make sure they're  
16 doing their job.

17 So in this case the job coach would help do things  
18 such as be his eyes and ears. As you'll hear, he's, as I  
19 said, deaf and he's visually impaired, so the job coach  
20 would help be his eyes and ears. You'll hear that he  
21 helped him focus. Walmart was never in doubt that he  
22 needed a job coach to do his job.

23 Would you bring up Exhibit No. 18, please?

24 You'll see this is the form that you will see in  
25 evidence. It's a form that was submitted to Walmart on

1 January 26th, 1999. And you will see that one of the  
2 accommodations, one of the changes in how the work is done  
3 there that was requested. And what was told is he was  
4 unable to work in the parking lot without assistance. And  
5 one of the things that Walmart agreed to do was to allow  
6 Paul to work and to have an aide to work in the parking  
7 lot. So Walmart knew that he needed a job aide, job  
8 coach, and Walmart agreed. And as I said, the job coach  
9 was not paid by Walmart.

10 So Paul starts in 1998, late 1998, and works as a  
11 cart pusher. A cart pusher, you will hear, Paul's job as  
12 a cart pusher, involved keeping the parking lot free of  
13 carts. His job was to move the carts from the parking lot  
14 into the bay, to load the carts up, to gather them  
15 together, to clean out the corrals, and to move them into  
16 the bay. You will hear that even with regular shopping  
17 cart pushers, cart retrieval comprises 95 percent of the  
18 job.

19 The job coach was there to help him, help Paul keep  
20 focused, to identify carts, to help direct him to a bay.  
21 And when it was necessary to, for example, turn the corner  
22 to take the carts into the bay, the job coach would put a  
23 finger on the front of the carts to help steer it.

24 He did other tasks, too. He greeted customers. He  
25 would wave. He would smile. He would tell them "hello."

1 He doesn't speak, but job coaches would help communicate  
2 with customers who were greeting him so he could  
3 communicate back.

4 He also -- he picked up trash from the parking lot.  
5 He loaded customer purchases into the trunk. He wiped  
6 down cars. He broke down boxes. And this was the job he  
7 held for 16 and-a-half years. He was good at this job.  
8 We will be introducing into evidence all of Paul's job  
9 performance evaluations and you'll have an opportunity to  
10 see them.

11 You will see, for example -- if you could do the  
12 2013 -- 2013, excuse me, evaluation -- you will see that  
13 in the 2013 evaluation, Paul was told, "Paul does well  
14 with making sure carts are full in the bay. Paul is good  
15 at making sure there are no stray carts all over and  
16 making sure all carts are cleaned up around the building."

17 You will see, too, the 2014, which is the last one  
18 before Mr. Reina was terminated or sent home and not  
19 permitted to return. In the 2014 it states, "Paul is a  
20 pleasure to work with. Paul knows his expectations and  
21 does his job well. Paul gets along with his fellow  
22 associates as well as is friendly to his customers.  
23 Paul's attendance is decent, having not missed any of his  
24 shifts, which shows his dedication to the job. Paul is  
25 good about making sure the carts are cleaned" -- excuse

1 me, "cleaned out of garbage." These are typical of the  
2 evaluations Paul received for 16 and-a-half years.

3       You'll also hear evidence that Walmart did not ask  
4 Paul Reina to do all of the jobs in the job description.  
5 Showing you, for example, the evaluation from 2008, you  
6 will see that there are "NAs" written next to a number of  
7 tasks that were in the job description, such as "Answers  
8 all customer service calls from other associates";  
9 "Communicates with other stock/cart associates to ensure  
10 all calls are answered"; "Helps keep restroom, vestibules  
11 and trash cans clean." There were "NAs" next to this.  
12 Paul was evaluated for these tasks because Paul was  
13 expected to do them.

14       Paul loved his job at Walmart. And from the job  
15 descriptions, you'll see that, at least then, Walmart  
16 liked Paul a great deal. You will also hear that Paul --  
17 or excuse me, that Walmart never told Paul or his job  
18 coaches that they were doing things incorrectly or wrong.

19       For example, you'll hear about something called a  
20 cart caddy. Now, this is a mechanized buggy that's  
21 used -- it can be used at Target -- excuse me, Walmart  
22 where the cart attendant would gather all the carts from  
23 around the parking lot, put it in the buggy and then that  
24 buggy would be remote-controlled driven into the bay. And  
25 as part of this, Paul's job, he would gather all the carts



1 and he would put them in the buggy. But the cart --  
2 excuse me, his job coach would actually control the remote  
3 control.

4 The job coach and Mr. Reina were never told that this  
5 was the wrong way to do things. They were never told that  
6 the job coach should not be operating the cart caddy. If  
7 they had been told, you will hear that they could have  
8 just pushed the carts. Paul could have just pushed the  
9 carts manually.

10 You'll hear testimony through a deposition expert of  
11 a manager who says there was no obligation that they had  
12 to use the cart caddy. They could have chosen the option  
13 of just pushing the carts manually.

14 Similarly, you'll hear testimony that a couple times  
15 a month a customer might leave a scooter in the parking  
16 lot, but this didn't happen regularly and it was a minor,  
17 irregular duty. There could have been other things that  
18 could have been done had there ever been criticism with  
19 how it was being done by Mr. Reina and his job coach.

20 But that is what Paul did. That is how we will show  
21 that Paul was doing -- the evidence will reflect his good  
22 performance. But Paul no longer works at Walmart. So  
23 let's talk about the evidence of what happened.

24 Paul lost the job that he loved and worked at for  
25 almost 17 years. On June 10th, 2015, a new store manager

1 started at Walmart. On that day, the manager learned  
2 about an incident that had occurred three years earlier.  
3 In this instance, in 2012, Paul was upset and his job  
4 coach tried to calm him down by giving him a bear hug and  
5 by signing to him. It was misinterpreted by customers who  
6 complained. The assistant manager of the store sent  
7 someone out to look and all was fine. But she was  
8 concerned.

9 She reviewed a videotape and she called the police.  
10 The police investigated and found that the concern of  
11 abuse was unfounded. This was just an issue of  
12 communication that was misinterpreted. Walmart knew about  
13 the incident. Walmart was told the concern was unfounded  
14 and Walmart took no action.

15 Now, you may hear testimony from Walmart about a  
16 supposed 2015 incident where they say that this occurred  
17 again. What you should listen for here is what the  
18 evidence doesn't show. The evidence doesn't show that  
19 anyone witnessed it. There is no interviews of anyone  
20 about a 2015 incident. There's no record of the supposed  
21 customer complaints. There are no police reports.  
22 There's no videotape. Both Ms. Slaght and Mr. Coppernoll,  
23 the job coach, will be testifying and will tell you there  
24 was no 2015 incident.

25 What happens is that there's this regurgitation of

1 the 2012 incident. And after that, Mr. Scheuerell, the  
2 store manager; and Julie Repka, a human resources  
3 professional; decide to conduct a surveillance of  
4 Mr. Reina. They, without telling Mr. Reina, without  
5 telling his job coach, they -- without notifying the  
6 guardian, they sit in a car and they watch Paul with his  
7 job coach doing the job.

8 Now, they said, and I expect they shall testify, that  
9 the job coach was doing 95 percent of the work. You will  
10 hear from Ms. Slaght and Mr. Coppernoll; as well as  
11 another job coach, Marge Polizzi; that that just didn't  
12 occur. Mr. Coppernoll will testify, who was the regular  
13 coach in question here, that he couldn't physically do 95  
14 percent of Paul's job.

15 So after this, this is June 10th or 11th, Rose Slaght  
16 is called into a meeting with the new manager. Rose, I  
17 can remind you, is Paul's foster mother and guardian. She  
18 expects the meeting to be a meet-and-greet: young new  
19 manager, 16 and-a-half year employee. She is in fact  
20 dismayed, as she will tell you, to have Mr. Scheuerell,  
21 the store manager, tell them that they had no paperwork on  
22 Paul Reina and that they needed to submit new medical  
23 proof that he had a disability and he deserved an  
24 accommodation. Roseann will testify that she was shocked,  
25 because he had worked there almost 17 years.

1           During this conversation Mr. Scheuerell also said  
2           that Mr. Coppernoll, the job coach, was doing 95 percent  
3           of the job. Both Ms. Slaght and Mr. Coppernoll  
4           immediately denied that that could have occurred.

5           So Mr. Scheuerell is now asking for proof, paperwork,  
6           that Mr. Reina had a disability and Mr. Reina deserved an  
7           accommodation. Roseann will say she was unhappy about  
8           this, but that she agreed to provide it.

9           She went to the doctor, the family practice that  
10          Mr. Reina usually goes to, and she asked them to fill it  
11          out. His doctor was gone, but another doctor in the  
12          service filled it out. She got the form and she returned  
13          it on July 9th. And you will see that this form actually  
14          answered the questions.

15          It shows that Mr. Reina has deaf-mutism, a  
16          developmental delay, visual loss, and an anxiety state.  
17          As far as the accommodations, it shows that he needed a  
18          job coach to do the hearing and the seeing.

19          Having gotten the form that they wanted, having  
20          filled out the form that they wanted, Ms. Slaght took it  
21          back to Jeff Scheuerell, the store manager, and she gave  
22          it to him. She got the form he had asked for.

23          Mr. Scheuerell takes the form from her, asks no  
24          questions about it, and says, "Don't call us; we'll call  
25          you." At that point he doesn't, as I said, ask Ms. Slaght

1 about any questions about it, doesn't call her doctor,  
2 doesn't call any advocacy group.

3 So Mr. Scheuerell tells her, "Don't call us; we'll  
4 call you." So Roseann Slaght is not in a position, and  
5 she will testify, to call. She has been told not to. But  
6 somebody else does call Walmart on behalf of Mr. Reina, a  
7 man by the name of Matt Matheny, who you will also hear  
8 testify.

9 Matt Matheny works for an organization called "Arc."  
10 Arc, in this case, served as a service facilitator for  
11 Mr. Reina. Among other things, what he did was he oversaw  
12 things such as the background checks for the job coaches,  
13 the fingerprinting, the FBI checks, and he was involved in  
14 visiting Mr. Reina every couple of months.

15 Mr. Matheny tried calling the store manager on  
16 multiple occasions to try to get Mr. Reina back at work.  
17 You will see his contemporaneous notes of his efforts to  
18 call. As you will see, there are notes from various days  
19 in June and July of 2015 that say "Called Walmart to speak  
20 to store manager. No answer. Left message."

21 And on each of these occasions, Mr. Matheny attempted  
22 to try to talk to the store manager to try to work things  
23 out. He will testify that he didn't just call these three  
24 times; these are the three times he left messages. He, in  
25 fact, called on multiple occasions and he didn't get an

1 answer.

2 So still trying to get Mr. Reina back to work,  
3 Ms. Slaght then goes on the Walmart internal employee  
4 webline, which is called "Walmart One." This is an  
5 internal, I don't know if it's called, "intranet." It's  
6 something for Walmart employees that they can access and  
7 check their schedules and other communications with  
8 Walmart.

9 So Ms. Slaght would go on to check whether Paul was  
10 being scheduled to work, because she had given the form to  
11 them, but he was never being scheduled to work. So she  
12 filed internally, through the hotline, the Walmart hotline  
13 that's in Walmart One, a complaint. She said that Paul  
14 needed help because they believed he was being  
15 discriminated against. And what do they hear? Nothing.

16 So in the end, Ms. Slaght went to the EEOC, my  
17 employer. They are -- the EEOC is the federal agency  
18 responsible for enforcing workplace discrimination laws,  
19 including the ADA. Ultimately, a meeting was held by the  
20 EEOC that had representatives from Walmart there,  
21 Ms. Slaght, Marge Polizzi -- as we said, his job coach is  
22 also Ms. Slaght's sister -- and Mr. Reina. And at this  
23 meeting Roseann Slaght learned what was the end result,  
24 because there Walmart representatives told her, told them  
25 all, that Walmart did not want Paul Reina back. After

1 that, the answer to Rose was clear.

2 Walmart sent a letter to Paul several weeks later  
3 where they asked for the same information that she had  
4 already given them. The letter was written by lawyers.  
5 Ms. Slaght didn't answer it, because she had already had  
6 her answer from Walmart: They did not want Paul back.

7 So there we are. Paul has never worked there again.  
8 He received wages for two weeks afterwards, but he's  
9 received nothing else. He has subsequently gotten  
10 employment, but the loss of his job affected him a great  
11 deal.

12 You'll hear that this job was a big portion of Paul's  
13 life, from the time he was in high school, for the next 16  
14 and-a-half years. And you'll hear testimony about how it  
15 affected his behavior, it affected his demeanor, and it  
16 affected his interaction with others.

17 At the end of the case, at the end of the  
18 presentation of the evidence, we're going to ask you to  
19 return a verdict for the EEOC on Paul's behalf, finding  
20 that Walmart had failed to accommodate Paul Reina by  
21 denying him the job coach and that they ended his  
22 employment because of his disability.

23 We will be asking for damages for the emotional  
24 distress he suffered and because of Walmart's failure to  
25 care about Paul's right to be free from discrimination.

1 Thank you.

2 THE COURT: And we will hear from Walmart.

3 MR. BULIOX: Good afternoon. That was kind of  
4 loud, wasn't it? Let me back it up a little bit. Good  
5 afternoon, ladies and gentlemen.

6 Let me just take a few moments to reintroduce myself.  
7 My name is Warren Buliox. I'm one of the lawyers for  
8 Walmart in this case. I work in a law firm and I'm part  
9 of a legal team.

10 Here with me, as you heard before, is Emery Harlan.  
11 And then we have Tracy Tompkins. Both Emery and I are  
12 lawyers and Tracy is a paralegal and together we are  
13 Walmart's legal team.

14 In here we also have a representative from Walmart's  
15 legal department, a Walmart internal lawyer, Kimberly  
16 Royal. And we have at our table as well, Julie Repka.  
17 Now, Julie is a senior leader in HR and she's also a  
18 person you're going to hear from a little bit later on.

19 Good afternoon again. And good afternoon, Judge, and  
20 counsel.

21 Now, given what we've just heard, I'm going to start  
22 off by telling a little story. Long, long ago, back  
23 before there were roads and highways, and so forth, when  
24 people traveled from settlement to settlement, from town  
25 to town, from village to village, they traveled down



1 trails. Those trails were through wooded areas. They  
2 were through the forest. The problem was that, in that  
3 forest, in those forests, there were wild and dangerous  
4 animals. There were wolves and there were bears and so  
5 forth.

6 So what people did is that they took fish and they  
7 smothered that fish in seasoning and spices to the point  
8 where it turned red. And then they smoked it and it made  
9 the fish very very smelly. They would then take these  
10 smelly fish out and go into the forest and put them in  
11 places away from the trail so that when they would walk  
12 down those trails, the wild animals, the bears and the  
13 wolves and everything else, will be attracted to those  
14 fish which were off the trail.

15 Do you know what those red fish became known as?  
16 "Red herrings." So to this day, a red herring is  
17 something that you throw out there to throw people off the  
18 trail. A true story.

19 We believe that the evidence in this case will show  
20 that a lot of what the EEOC just said and will present are  
21 red herrings. The central issue in this case, ladies and  
22 gentlemen, is whether or not Mr. Reina is a qualified  
23 individual with a disability, because if he's not, the  
24 case is over.

25 We anticipate that the Court will instruct you on the

1 law. You've already received some preliminary  
2 instructions. We anticipate that the Court will instruct  
3 you that a qualified individual with a disability is  
4 someone who can perform the essential functions of the job  
5 with or without a reasonable accommodation. We also  
6 anticipate that the Court will instruct you that a  
7 reasonable accommodation is not a job aide or a job helper  
8 or a job coach who performs the essential functions of a  
9 person's job. But we'll talk more about that later.

10 In order to understand this issue, we have to  
11 understand who this case is all about, and that's Mr. Paul  
12 Reina. Now, as you've just heard, Mr. Reina has been  
13 dealt a very very hard hand in life. The evidence will  
14 show he's deaf, he's blind. I'm sorry, he's legally  
15 blind. He can see. He's cognitively delayed and he's  
16 autistic. And the evidence in this case will not show  
17 that he was incapable of doing anything.

18 You're going to see video evidence of him doing  
19 household chores, I'm sure, of taking medicine, eating  
20 breakfast. You may even see some video evidence of him  
21 going on a paper route. But the paper route, household  
22 chores, eating breakfast, the evidence will show that  
23 those are all red herrings, ladies and gentlemen.

24 You will hear testimony, on the other hand, from  
25 manager after manager, and even by some of his job

1 coaches, that he was simply unable to do his job. For  
2 example, he was unable to steer carts by himself. He  
3 could push, but he was unable to steer. So he was,  
4 therefore, unable, by himself, to navigate the parking  
5 lot, and he's a cart pusher.

6 You will hear testimony that Mr. Reina needed the  
7 24-7 assistance, physical hands-on assistance, of another  
8 human being to do his job. And you will hear that from  
9 the beginning, he was not qualified to do his job.

10 There are two documents in particular, and we'll get  
11 into those later. But one of those documents he signed,  
12 indicating, as clear as day, that he was unable to perform  
13 the essential functions of his job. And he signed it, and  
14 that was back in 1999, so at the very beginning of his  
15 employment.

16 And over the course of this case you're going to hear  
17 testimony about how manager after manager came in. They  
18 noticed that Mr. Reina had a job aide with him. They  
19 noticed that this job aide was performing the duties of  
20 Mr. Reina. And they either assumed it was okay, because  
21 it was there and in place before they got there, or they  
22 had empathy for Mr. Reina. You know, here's a gentleman  
23 who had a series of severe impairments and he had a job,  
24 so they don't want to put it out of whack, they don't want  
25 to mess that up.

1           And then you'll hear testimony from a few managers  
2 that will say that, "Hey, look, that arrangement, you  
3 know, was okay at the end of the day," even though they  
4 disagreed with it, because Mr. Reina's job coach was doing  
5 the work and, at the end of the day, the work was getting  
6 done.

7           We believe the evidence will show that this was not  
8 reasonable and that when a new manager the EEOC just spoke  
9 about came to the store, that he noted that this  
10 arrangement wasn't right, reported it to corporate, and  
11 the arrangement of Mr. Reina having someone else do his  
12 job ended.

13           Now, the EEOC alleges that this was all unlawful.  
14 Well, the evidence will show that it was not. Let's get  
15 into first the EEOC's burden of proof in this case.

16           So the EEOC is suing Walmart. As such, they have the  
17 burden, the legal obligation, to prove that Walmart  
18 engaged in unlawful conduct. In other words, Walmart does  
19 not have to prove nondiscrimination. It is the EEOC's  
20 burden to show you that Walmart unlawfully acted against  
21 Mr. Reina.

22           MS. VASICHEK: Your Honor, if I could object.  
23 This is argument.

24           THE COURT: It is argumentive.

25           MR. BULIOX: Okay. We expect that the Court will

1 instruct you that if Mr. Reina is a qualified individual  
2 with a disability, then the case moves on. So what is a  
3 qualified individual with a disability? We anticipate  
4 that the Court will instruct you that a qualified  
5 individual with a disability meets the legitimate skill  
6 sets for the position, has the requisite experience for  
7 the position, has the education for the position, and can  
8 perform the essential functions of the job with or without  
9 reasonable accommodations.

10 MS. VASICHEK: Your Honor, if I may object again.  
11 This is a legal argument.

12 THE COURT: It's still argumentative. But he's  
13 got the slides, so he's framing what he's now going to  
14 present as the evidence that Walmart has. So move along  
15 to the evidence and preview it for us.

16 MR. BULIOX: So to consider this issue, you have  
17 to consider what a reasonable accommodation is. So that's  
18 going to require us to look at the job and it's going to  
19 require us to look at what Mr. Reina could and could not  
20 do. Mr. Reina was hired in 1998 as a cart pusher. You  
21 will hear that this position is also called a courtesy  
22 associate or a cart attendant. Now, let's look at what  
23 the job was all about.

24 This is a job description for Mr. Reina's job that  
25 was in place during much of his employment at Walmart.

1 And here, according to the *Essential Functions*, a cart  
2 pusher "maintains availability of and organizes carts and  
3 flatbeds, assists customers with transporting items, loads  
4 merchandise into customer vehicles, and properly and  
5 safely uses cart retrieval equipment."

6 And there was a customer service component of the job  
7 as well. Under the essential functions for customer  
8 service, the job description provides that cart attendants  
9 are to "Provide customer service by acknowledging the  
10 customer, identifying customer needs, assisting with  
11 purchasing decisions, locating merchandise, resolving  
12 customer issues and concerns, and," of course, "promoting  
13 products and services" and "maintaining a safe shopping  
14 environment."

15 We're going to show you a matrix of central job  
16 functions from 1999 that is in Mr. Reina's personnel file.  
17 You'll see where it says here *Cart Pushers* and it has  
18 check marks for the essential functions that they're able  
19 to do, are required to do; for example, customer service,  
20 carry-out assistance, sweep floors, pushing or pulling.

21 And you see here we have a signature from Mr. Reina.  
22 And right above that signature, look what it says.  
23 There's an X to "No, I do not have the ability to perform  
24 all the above functions with or without reasonable  
25 accommodations." So will the evidence show that Mr. Reina

1 could do his job with or without reasonable  
2 accommodations? The evidence will show that Mr. Reina  
3 needed an accommodation of another person to do his job.

4 Here is a 1999 accommodation request made on  
5 Mr. Reina's behalf during his employment at Walmart which  
6 was in place for, well, 16 years. Now, according to this  
7 form, his limitations included being, quote, "Unable to  
8 work in parking lot without assistance," end quote. And  
9 as an accommodation, it was requested on this form that he  
10 be allowed to -- that he be allowed an aide to work with  
11 him and that he not be asked to do tasks that he was  
12 incapable of performing. The evidence will show that  
13 Mr. Reina was not able to do his job from the very  
14 beginning. And this, folks, is no surprise.

15 You will hear evidence in this case that Mr. Reina is  
16 and always has been deaf and legally blind and cognitively  
17 delayed and autistic and that he cannot stay on focus.  
18 And his long-term doctor of 30-plus years will tell you  
19 that he is noncommunicative. So how then could he have  
20 performed the central functions of his job and processed  
21 instructions and directions from customers and received  
22 and understood training on Walmart policies?

23 We believe that the evidence will show that he could  
24 not have, without the 24-hour assistance -- I hate to  
25 sound like a broken record -- the 24-hour assistance of

1 somebody else doing his essential functions for him.

2 Now, over the course of this trial you will hear  
3 testimony by manager after manager, and again even some of  
4 his job coaches, that Mr. Reina needed another human being  
5 to steer carts in the parking lot, to use the cart caddy,  
6 to navigate the parking lot safely, to talk to customers,  
7 to process directions from supervisors; that he needed  
8 another person to make judgments about how to most  
9 efficiently gather carts, to push and maneuver multiple  
10 carts in the parking lot, to strap multiple carts  
11 together; that he needed another person to give directions  
12 to customers, to put away the motorized shopping cart  
13 which we'll talk about in a little bit and which you'll  
14 see some video of. And he also needed another person to  
15 actually take trainings for him on Walmart policies. And  
16 all of this makes sense, the evidence will show.

17 In this trial you will see video showing you a cart  
18 pusher in action. Here are two clips.

19 Tracy, can you play the first clip?

20 (Video played.)

21 Now, this right here is the cart caddy machine.  
22 There's our cart pusher. And you'll be able to see it a  
23 little bit better further in the clip, I believe, but on  
24 the left-hand side he has a remote control. And the way  
25 you operate this is that you tell the cart caddy to go up



1 or move forward with a remote control, to stop, and then  
2 you steer the carts with your hand in the front.

3 Tracy, can you play the next clip?

4 (Video played.)

5 And here we see a cart pusher interacting with a  
6 customer in real-time, spontaneously answering questions  
7 as asked, and then using what's called a motorized  
8 shopping cart, which is like a scooter with a basket on  
9 the front. The cart pushers were required, as you just  
10 saw in the job description, to maintain and manage  
11 shopping carts. These are one of the carts. The evidence  
12 will show that this was part of their job.

13 So as you go through this evidence, ask yourself, how  
14 can Mr. Reina do this with or without reasonable  
15 accommodations? Hear the evidence, apply your common  
16 sense, and ask yourself, was he qualified to do the job.

17 Now, the EEOC has said a lot here, some of which  
18 either does not make much sense when looked at in the full  
19 context of the evidence in the case and some of which are  
20 red herrings. For example, they may try to suggest that  
21 customer service was not important or that Mr. Reina was  
22 only required to engage in limited customer service, such  
23 as saying "hi."

24 The EEOC suggests -- it makes a big deal about  
25 Mr. Reina working for Walmart for over 16 years. They

1 also make a big deal about him having positive performance  
2 evaluations. And they argue that Mr. Reina was in some  
3 type of special position where he wasn't required to do  
4 his job. But these are distractions designed to throw you  
5 off the trail.

6 One of the biggest distractions in this case has been  
7 that customer service was either not a part of Mr. Reina's  
8 job or that he could perform a customer service function.  
9 But let's look at the evidence and let's look at what the  
10 evidence will show and let's look at customer service.

11 Do you remember the job description that we showed  
12 you earlier and its reference to the essential function of  
13 customer service? Answering questions and helping  
14 customers and acknowledging customers and identifying  
15 customer needs and locating merchandise.

16 As a starting point, you will receive testimony from  
17 multiple managers who will tell you that in all of the  
18 years that they worked around Mr. Reina, they not once saw  
19 him make eye contact with them or even say "hello" or "hi"  
20 after they greeted him. They will tell you that in all  
21 the years that they worked with Mr. Reina and observed him  
22 and had interactions with him, he did not once say  
23 anything or even sign anything, use sign language in any  
24 way. And you will hear testimony about how, in all those  
25 years, Mr. Reina never, not once, acknowledged them.

1           And the evidence will also show that he did not  
2           acknowledge or interact with customers. Also, to do the  
3           customer service job, Mr. Reina would have needed to be  
4           able to not only communicate with customers, but he would  
5           have needed to be able to process information and answer  
6           customer questions and respond accordingly. For instance,  
7           you will receive testimony that any number of questions  
8           could have been asked of Mr. Reina by customers.

9           You'll hear testimony during this trial that cart  
10          attendants are sometimes asked questions from customers  
11          like "What time does the store close?" and "Are there any  
12          good sales?" and "Can you help me carry this to my care?"  
13          and "What door, what entryway, is closest to the rest  
14          room?" Review the evidence and ask yourself whether  
15          Mr. Reina could do this.

16          The evidence will show that he cannot answer customer  
17          questions, that he cannot identify customer issues,  
18          without somebody processing that information for him and  
19          answering those questions for him. In other words, he  
20          needed somebody else to do his job.

21          For example, Mr. Reina's longest serving job coach,  
22          we anticipate, will testify that in the ten years that he  
23          worked as Mr. Reina's job coach, that's from 2005 to 2015,  
24          that in those ten years he never personally -- "he" being  
25          Mr. Reina -- never personally communicated a products

1 location to a customer, nor gave direction to the  
2 bathrooms, and that those requests were handled by him.  
3 This is Mr. Coppernoll. You heard about him a little  
4 earlier. And in the ten years that he worked as  
5 Mr. Reina's job coach, we anticipate he will also testify  
6 that Mr. Reina could not communicate with or assist  
7 customers and that he had to do it.

8 Another red herring from the EEOC is this concept  
9 that Mr. Reina needed somebody to be his, quote, "ears and  
10 eyes" when it came to cart retrieval activities. Well, as  
11 I indicated earlier, Mr. Reina could physically push a  
12 cart. That wasn't a problem for him.

13 But the evidence will show that he cannot steer the  
14 cart by himself, that somebody had to be in the front of  
15 carts, when he pushed multiple carts, steering. The  
16 evidence will show that he was unable to navigate the  
17 parking lot safely by himself or use the cart caddy, that  
18 cart retrieval equipment you just saw, or use or put away  
19 the motorized shopping cart you saw. Instead, the  
20 evidence will show that his job aides did that for him.

21 Again, Mr. Reina's longest serving job coach of ten  
22 years pushed carts for Mr. Reina. And the evidence will  
23 show that he had back problems and that he still pushed  
24 carts. The evidence will show that he needed to do that  
25 and he did it.

1       The evidence will show that Mr. Reina needed far more  
2 than just ears and eyes. He needed, the evidence will  
3 show, hands, thinking, processing information, answering  
4 questions, communicating with customers, providing  
5 customer service, and so on.

6       So apparently acknowledging all of this, the agency  
7 argues or is taking the position that Mr. Reina was in  
8 some type of special job, a job that may not have required  
9 all of the functions that a cart attendant position  
10 requires, such as customer service or using the cart  
11 caddy.

12       But the evidence will show that that does not make  
13 any sense. For example, the evidence will show that  
14 Mr. Reina worked from 8 a.m. to noon and that at 10 a.m.  
15 another cart pusher was scheduled. So at that point there  
16 would be two cart pushers in Walmart's parking lot. But  
17 between the hours of 8 a.m. and 10 a.m., Mr. Reina and his  
18 job coach were the only ones in the parking lot.

19       The evidence will show that the expectation at  
20 Walmart was that cart attendants be locked and loaded,  
21 armed and ready, to perform each and every one of the  
22 essential functions of the job; that if a motorized  
23 shopping cart needed to be moved at nine o'clock in the  
24 morning, a cart attendant needed to do that.

25       The evidence will show that management needed a

1 fully-functioning cart attendant to do the job. And  
2 Mr. Reina was able to do that, but through his job coach  
3 performing those duties.

4 So 17 years -- well, it was almost 17 years, it was  
5 about 16 and-a-half years -- 17 years of Mr. Reina working  
6 for Walmart. 17 years of good performance evaluations.  
7 One of the biggest red herrings from the EEOC is the  
8 notion that this somehow shows that he was qualified for  
9 the position, that he could do the job, but the evidence  
10 will show quite the opposite.

11 For example, and as I mentioned earlier, you will  
12 hear testimony about how Mr. Reina needed help in every  
13 aspect of his job. And as for the performance  
14 evaluations, those are worth taking a look at.

15 One, you will hear testimony that the evaluations  
16 were not based on Mr. Reina alone, but they were based  
17 upon what Mr. Reina and his job aide were able to achieve  
18 collectively. In other words, they were based on what the  
19 job aide did, in a lot of situations.

20 And you will see the actual performance evaluations  
21 in this case. And there's one. This is Mr. Reina's 2007  
22 performance evaluation. Here you will note that he  
23 received a *Meets Expectation* rating for using a ladder.  
24 But neither Mr. Reina's long-term job coach nor his foster  
25 mother believed that Mr. Reina ever used the ladder at

1 Walmart.

2 Also -- and it's a little hard to see, but you will  
3 be able to look at it later -- Mr. Reina received a,  
4 quote, *Meets Expectations* for "ensuring OSHA," OSHA  
5 regulations and guidelines are being properly followed,  
6 OSHA. The evidence will show that given Mr. Reina's  
7 impairments, it just doesn't make such sense. Let's go to  
8 the next evaluation.

9 Here's a 2011 evaluation. Here you will see that he  
10 received a *Solid Performance* rating on, quote, "Judgment:  
11 Makes Effective Choices," which says, "Uses policies,  
12 procedures and/or guides to make good choices" -- "uses  
13 policies, procedures and guides to make good choices."

14 You will hear testimony from his long-term job coach  
15 again that the job coach actually took the training for  
16 Mr. Reina. He put on head phones, took the online or  
17 computer-based training for Mr. Reina and did the training  
18 for himself, and that Mr. Reina didn't do that training.

19 Also, on this performance evaluation, under *Customer*  
20 *Service*, it says, "Asks questions." And then it says,  
21 under *Influence and Communicate*, "Communicate the right  
22 information." As I previewed earlier, the evidence will  
23 show that his long-term doctor of 30-plus years will tell  
24 you that he is noncommunicative.

25 Let's look at his 2014 evaluation. On here there's a

1 line that says, quote, "Paul also needs to be aware that  
2 when he is not using the cart caddy, only 10 carts can be  
3 pushed at a time," "when he is not using the cart caddy."  
4 But the cart caddy, you will see from the evidence,  
5 requires manipulation of a remote control, as you saw  
6 earlier.

7 And you will hear testimony from Mr. Reina's  
8 long-term job aide that Mr. Reina could not, "could not,"  
9 operate that cart caddy. He tried to show him how to do  
10 it, but Mr. Reina could not, and that this job aide used  
11 the cart caddy instead.

12 You will hear testimony that the cart caddy is needed  
13 often when there's a lot of carts, because the cart caddy  
14 can push up to 20 carts at a time, versus somebody pushing  
15 manually 10 carts at a time and that at busy times that is  
16 very much needed and expected of cart attendants.

17 So, yes, Mr. Reina did report to work at Walmart for  
18 over 16 years. And, yes, he did receive positive  
19 evaluations. But the evidence will show that this was  
20 because someone else was doing the work for him. It was  
21 allowed for a very very long time. But the question for  
22 you is going to be whether or not the accommodation was  
23 reasonable in the first place. So let's explore briefly  
24 why it went on so long and the evidence you will hear  
25 around that.



1           You will hear testimony, as I indicated earlier, that  
2 when some managers came to the store, the work arrangement  
3 between Mr. Reina and the job helper was already in place.  
4 So they just assumed that it was okay; that again, some  
5 people were empathetic to him; and that some people were  
6 fine with it because the job was getting done at the end  
7 of the day through his job helper.

8           And then you will hear testimony about how, when  
9 Mr. Reina -- I'm sorry, how, when the new store manager  
10 came to the store, how he received a report that Mr. Reina  
11 had been physically assaulted by his job aide. Now, you  
12 may receive evidence that Mr. Reina sometimes has  
13 outbursts and that his job aide needs to control him  
14 physically.

15           But this new manager came to the store, heard a  
16 report that his job aide was physically abusive to him,  
17 looked into it; went to the parking lot, observed  
18 Mr. Reina and his job aide at work; saw that the job aide  
19 was doing most of the job, 85 percent at least of the job;  
20 said to himself, "This doesn't seem right"; and reported  
21 everything up to corporate. And afterwards, that's when  
22 the arrangement of Mr. Reina having another person do his  
23 job stopped.

24           Now, the EEOC claims that the new manager, you know,  
25 or suggested the new manager had a problem with Mr. Reina

1 because of his disability and that this work arrangement  
2 stopped because of his disability and that all of this was  
3 unlawful discrimination. But there will be evidence that  
4 the store manager or the decision-maker had no issue with  
5 Mr. Reina because of his disabilities.

6 For example, there will be no evidence of the new  
7 store manager or anyone else making jokes about Mr. Reina,  
8 there will be no evidence of inappropriate or disparaging  
9 emails or texts concerning Mr. Reina by management, and  
10 there will be no evidence of the new store manager or  
11 anyone making unprofessional or disparaging remarks about  
12 Mr. Reina.

13 What the evidence will show, folks, is that a manager  
14 came in, was concerned about an associate. Associates are  
15 Walmart employees. At Walmart, employees are called  
16 "associates." But that a new manager came in, was  
17 concerned about an associate being abused by somebody else  
18 and looked into it. There was no discrimination here, the  
19 evidence will show. There was no ill will against  
20 Mr. Reina because he's disabled.

21 Now, I'm almost done. The agency claims that the new  
22 manager or may suggest that the new manager messed up or  
23 disrupted a good thing that Mr. Reina had going on and  
24 that the provision of a job aide is a reasonable  
25 accommodation. Let's examine that.

1 THE COURT: This is going to be a good thing for  
2 your closing argument, but let's stick to what the  
3 evidence is going to show rather than diving into the  
4 instructions. Next slide.

5 MR. BULIOX: Okay. The evidence will show this  
6 is not, ladies and gentlemen, the situation of a person  
7 needing a stool next to their workstation because they  
8 cannot stand for too long or needing time off to go to a  
9 therapy session or needing a daily reminder because they  
10 have an intellectual disability. And this is not the case  
11 of a person --

12 THE COURT: Would you take the slide down,  
13 please?

14 MR. BULIOX: -- and this is not the case of a  
15 person in a wheelchair needing a device in the workplace.  
16 Rather, Mr. Reina, the evidence will show, needed another  
17 human being to do his job.

18 And did I mention that the evidence will show that  
19 these job aides were not employees of Walmart? So was it  
20 reasonable to have someone who is not employed by Walmart  
21 having, as the evidence will show, unrestricted access to  
22 Walmart's parking lot; to its back room, the evidence will  
23 show; to customers while wearing a Walmart vest and  
24 masquerading around as a Walmart employee, when he wasn't?  
25 Ask yourself, is this reasonable?

1 As I mentioned earlier, you have to determine, you  
2 have to be the judge, of whether or not Mr. Reina was a  
3 qualified individual with a disability and whether or not  
4 he was discriminated against on account of that  
5 disability.

6 We look forward to presenting evidence to you in this  
7 case and talking to you at the end of the case. Thank  
8 you.

9 THE COURT: All right. Let's -- we can deal with  
10 the podium there. It's not blocking your view of the jury  
11 or anything. So why don't we just -- we will move the  
12 podium at the next break. So let's just begin by having  
13 the EEOC call its first witness.

14 MS. VANCE: Thank you, Your Honor. And I did  
15 have a question about use of an exhibit that's been  
16 stipulated to.

17 THE COURT: Okay.

18 MS. VANCE: May I move Exhibit 22 into evidence,  
19 pursuant to a stipulation of the parties, at this time?

20 MR. BULIOX: One second.

21 THE COURT: Is there any objection to 22? That's  
22 the job description?

23 MR. HARLAN: Oh, yes.

24 THE COURT: Okay. That's admitted.

25 **MARGARET POLIZZI, PLAINTIFF'S WITNESS, SWORN**

1 THE COURT: May I make a suggestion on the  
2 microphone? If you tilt it down -- there you go. Even  
3 further. No, just the bottom part. You've got to bend it  
4 sort of where it attaches to the table and then bend that  
5 part up. There you go. That should work a little bit  
6 better. It shouldn't distort it.

7 THE WITNESS: Thank you.

8 THE COURT: Keep it down out of your way and it  
9 should be just fine. Go ahead.

10 DIRECT EXAMINATION

11 BY MS. VANCE:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Would you please state your full name for the record?

15 A. My name is Margaret Theresa Fallon Polizzi.

16 MS. VANCE: Has the witness been sworn in?

17 THE COURT: No -- yes. I got distracted.

18 MS. VANCE: I'm sorry.

19 THE COURT: Yes, the witness has been sworn in.

20 MS. VANCE: Thank you.

21 BY MS. VANCE:

22 Q. Ms. Polizzi, where do you live?

23 A. I live in Bayfield, Colorado currently.

24 Q. And during the duration of Paul Reina's employment at  
25 Walmart, where did you live?

1 A. I lived in Beloit, Wisconsin at that time.

2 Q. What is your current occupation?

3 A. Currently I work for Comfort Keepers of Durango.

4 Q. What does that work entail?

5 A. We help people to stay in their homes. We're  
6 nonmedical support for people who want to stay in their  
7 homes who have recent injury or long-term diseases like MS  
8 or Parkinson's.

9 Q. What is your relationship to Paul Reina?

10 A. I am Paul's proud foster aunt, they call me.

11 Q. How long have you known Mr. Reina?

12 A. I've known Paul since he was about four years old.

13 Q. And so would you please tell us about your history  
14 working with Paul?

15 A. Throughout his entire life?

16 Q. The times when you've been employed to work with him.

17 A. Oh. I started probably in my early 20s as a respite  
18 worker for Access. And in that being a respite worker,  
19 that means that I would take my sister, in their  
20 caregiver's place, in whatever they were doing.

21 So it first started when Paul went to high school and  
22 there was a need for like a teacher's aide or an aide with  
23 him. And I would be, instead of doing the respite at  
24 home, I would go with him to school and assist him in  
25 whatever they were doing there.

1 And I also worked with Paul's brother, or foster  
2 brother, Donny. That was actually my main person that I  
3 worked with and occasionally I would work with Paul.

4 Q. And can you just explain for us, so we understand,  
5 Mr. Reina's foster brother, Donny, he also has  
6 disabilities?

7 A. He does have disabilities. He's deaf, also.

8 Q. And what are Paul Reina's limitations?

9 A. The only thing we absolutely know about Paul is that  
10 he's deaf. Everything else has changed. I was told that  
11 there was some brain damage early in his life and there  
12 was some emotional needs, but it's never been specified or  
13 we never really had a diagnosis of any kind of syndrome.  
14 Mostly we just dealt with his deafness.

15 Q. Can you describe for us a little bit about the visual  
16 abilities or limitation that Paul has?

17 A. It was fleeting. Sometimes he wouldn't see things.  
18 Other times he had great vision. So you could never  
19 really tell. But it was mostly I think getting him to  
20 attend. And then if you wanted him to see something far  
21 away, he actually seemed like he saw it. And with the  
22 feedback Paul gave, it was hard to tell exactly what kind  
23 of vision he did have, because he was capable of doing  
24 almost anything you asked him to do if you got his  
25 attention and showed him.

1 Q. Well, can you give us an example? Like how far would  
2 you estimate Paul could see if you pointed to a shopping  
3 cart far away from you?

4 A. He went towards shopping carts that I gestured over,  
5 I'd say, 50 yards away, 50 to a hundred yards away.

6 Q. Okay. And would you tell us a little bit about how  
7 you communicate with Paul?

8 A. We use a mix of home sign and ASL.

9 Q. Can you show the jury so we can get an idea of how  
10 you would greet Paul in the morning?

11 A. I would say "Hi" and usually "How are you?" And then  
12 I would say "We're going to go to work today," which is  
13 all ASL. But occasionally, like for the shopping carts,  
14 we would use this symbol, which is more of the action we  
15 use to push the carts, than the actual cart symbol, which  
16 I don't even really know.

17 Q. And how did you come to learn about how to  
18 communicate with Paul and to learn the signs he knew?

19 A. Well, all through Paul's life it was kind of like we  
20 had to teach him to sign. So you would have the activity.  
21 Like if I wanted Paul to cut some wood, I would show him  
22 and then I would sign the cut and then the wood sign and  
23 then cut the wood and that's how we paired things. So  
24 that's how Paul understood them. Then when we came back  
25 to do that activity, you could sign those and he would



1 know exactly what you were talking about.

2 Q. Please describe for us the process for getting hired  
3 to be a personal aide for Mr. Reina.

4 A. Access did like background checks quarterly. And  
5 then I had like a fingerprint check done like every two or  
6 three years, so it was a background check mostly.

7 The training that I did do the work with Donny and  
8 Paul was mostly brought about by my sister offering  
9 trainings. And a lot of times they were autism trainings  
10 or trainings on communication or nonverbal communication,  
11 things that would relate to Donny and Paul. It just so  
12 happens that autism, a lot of trainings have sensory  
13 deprivation, which you can see the parallel with Paul and  
14 Donny might need with being deaf.

15 Q. And you mentioned Access as the agency that monitored  
16 your fingerprints and took the background checks?

17 A. Exactly.

18 Q. How were you paid? Was it also with this agency?

19 A. Yes, through Access.

20 Q. And was that hourly? How were you paid for your  
21 time?

22 A. Hourly.

23 Q. And then let's focus to Paul's employment, Paul's  
24 time at Walmart. And can you describe for us the early  
25 days that you remember of Paul's employment with Walmart?

1 A. When paul first started at Walmart, it was really fun  
2 to go there with him because he -- you'd take him and he  
3 had a routine. You just kind of led him, you know. And  
4 he'd go and punch in.

5 And by the time I had worked with him, he had already  
6 established the routine, which was good because the people  
7 who first started with him probably had to do a lot more  
8 training. So I was able to just go in, help Paul get to  
9 the back to punch in. And we'd immediately go out to the  
10 parking lot and we would start collecting carts.

11 And that was really a great thing because Paul seemed  
12 to be -- you know, he was a good cart pusher. He was able  
13 to do the job with very minimal intervention from me, no  
14 hand or nothing like that. I could gesture and sign to  
15 him and he could follow through with this set of routines.  
16 So by the time I actually worked with Paul at Walmart, he  
17 was able to do those things already. And we started to  
18 teach him --

19 Q. Let me jump in for one second, because I heard you  
20 say the people who started with him had trained him. Can  
21 you tell us a little bit about what you know about how  
22 Paul found the job and the people that started with him?

23 A. Well, I think when he was still in high school,  
24 because his caregiver, my sister Rose, was very adamant  
25 that the boys -- she didn't want them to just sit and have

1 nothing and collect dust aside. So it had always been a  
2 life plan for them to get something gainful to do after  
3 they went to high school. You want your family and your  
4 children to have the best life possible.

5 And so we knew that Paul was much more capable than  
6 Donny of probably getting an outside job and keeping it.  
7 So the emphasis that his job coach took at that time was  
8 finding him a job that he could really learn to do  
9 independently and probably do it himself.

10 So I'm sure that, I think it was Ann and Shelley went  
11 to the Walmart interview, that she talked with them and  
12 asked them, this is something they can do, I'm sure  
13 that --

14 MR. HARLAN: I'm going to object, Your Honor. It  
15 appears the witness doesn't have the foundation to speak  
16 to what happened in the interview process.

17 THE COURT: Yeah. How do you know about that?

18 THE WITNESS: Just by hearsay from being around  
19 my sisters.

20 THE COURT: All right. She can go into that.  
21 Just put a little timeline on it for how you would know  
22 about it. So when did Paul complete his high school?

23 THE WITNESS: '98 or '99.

24 THE COURT: That's about when he started working  
25 for Walmart; is that right?

1 THE WITNESS: Yes.

2 THE COURT: When did you first take him to  
3 Walmart?

4 THE WITNESS: I probably didn't work with Paul at  
5 Walmart until '99, 2000, for the first time. And I was a  
6 substitute job coach. I wasn't Paul's permanent job coach  
7 at that time.

8 THE COURT: Okay. Go ahead.

9 BY MS. VANCE:

10 Q. All right. So I would like to ask you to give us  
11 some context about your work. You said you weren't the  
12 main job coach; you were a substitute job coach?

13 A. Right.

14 Q. Can you also tell us, did you work any hours as  
15 Paul's personal aide outside of the time he spent at  
16 Walmart?

17 A. Yes, I did.

18 Q. And I'm asking about this time frame of when he's  
19 coming out of high school.

20 A. Yeah. During that time I worked -- if I wasn't  
21 working at my regular job, I would almost -- most likely  
22 be working with Donny. And so I would have been at the  
23 house early to help Paul get up, get ready for work, have  
24 breakfast. So I saw him just about every day even when I  
25 wasn't his job coach.

1 Q. And then generally, we'll get into specifics after  
2 you give us kind of a general framework, but I would like  
3 to ask generally, what were the job duties Mr. Reina  
4 performed in his job at Walmart?

5 MR. HARLAN: Just objection, time frame.

6 THE COURT: We're just talking about the time  
7 when you were there with him at Walmart.

8 A. Okay. When I first worked with Paul at Walmart, it  
9 was my understanding that just cart collection was enough  
10 because he was the only one there at the times he was  
11 there from eight to -- or 8:30 to 12. Until ten o'clock  
12 we, never saw another cart pusher, so we knew that  
13 collecting the carts was a priority. And usually there  
14 was a lot of stray carts early in the morning because  
15 that's when the store opened.

16 So we would go punch in, come right out to the  
17 parking lot and start sweeping the parking lot collecting  
18 carts. Paul also picked garbage out of the carts, like  
19 actually cleaning the carts out, which I thought was  
20 overkill. But if he wanted to be a good employee, I was  
21 going to let him. So he did that.

22 At that time, too, He was supposed to collect garbage  
23 from the garbage cans, which were always way overflowing.  
24 That was probably the hardest job for Paul because he  
25 couldn't stand the smell. He would always (witness

1 pinching nose). But he'd do it anyways if he was directed  
2 to do so. Those were the main jobs that we did at first.

3 Of course if they had like the plant carts or the  
4 flatbeds, we would take those in special. They had some  
5 toddler carts. We'd take those in special into the store.  
6 And that, of the three and-a-half hours we were there,  
7 that's about all we ever got done.

8 Q. Then when you consider the role you played as job  
9 coach when you were the substitute, describe for us how  
10 you saw your role.

11 A. I felt that I needed to help Paul to be a super-duper  
12 good employee and work continuously. So we worked  
13 together. A lot of times we would start to sweep the  
14 parking lot. And as Paul got better at the job and didn't  
15 need me to lead him, we would actually split up and get  
16 more work done.

17 So Paul would parallel. Paul would collect the carts  
18 from his side of the aisle. I'd collect a few from that  
19 side. We'd get together and take them to the building.  
20 And I didn't always do that, but I did that when the need  
21 was there. When they were really low on carts, then I  
22 would step up and do some of the work also in a parallel  
23 fashion to Paul.

24 And as far as getting the carts and taking them, what  
25 Paul expected for me usually was I was the strategist. I

1 would decide which path we were going to take through the  
2 parking lot, when I looked at how many carts were there,  
3 and Paul was the tactics guy. He'd get all the carts.

4 And then I'd tell him when we'd go up to the  
5 building. When we got about 10 or 15 carts and they got  
6 kind of long, we'd head back to the building. And then  
7 all I'd have to say is "Let's go get more carts" and he'd  
8 be right out the door. He knew exactly what was expected.

9 THE COURT: Again for time frame purposes, so '99  
10 or 2000, when you served as a substitute job coach for  
11 him, when were you actually his job coach, what years?

12 THE WITNESS: I became his job coach in the end  
13 of '16 through '18 I think. But I was Paul's job coach  
14 for the paper route, which was the job after Walmart.

15 THE COURT: I got it. Okay.

16 BY MS. VANCE:

17 Q. To give a little more context to that, Ms. Polizzi,  
18 estimate for us how many times in total throughout the 16  
19 and-a-half years do you think you ended up being called in  
20 to be a substitute job coach?

21 A. I would guess it was about 30 to 50. I can't guess.  
22 40, something like that. It wasn't all that often.  
23 Sometimes it would be like for a week at a time, but  
24 otherwise it was very sporadic.

25 Q. And I'll direct your attention to what's been

1 admitted into evidence as Plaintiff's Exhibit 22 and draw  
2 your attention to some of these job functions in the list.  
3 I see --

4 THE COURT: Just for the benefit of the --

5 THE WITNESS: Thank you.

6 THE COURT: -- for the benefit of the jury, if  
7 you would just tell them what the document is that we're  
8 looking at here.

9 MS. VANCE: Yes. Thank you.

10 BY MS. VANCE:

11 Q. And Exhibit 22 is a job description of the cart  
12 attendant job issued by Walmart. So I'll read the -- I'll  
13 start in on some of this list of job duties. "Maintains  
14 availability of and organizes carts/flatbeds." Please  
15 take a minute to describe how Paul performed that job task  
16 when you were his job coach.

17 A. Well, I think I kind of already explained that that  
18 was our main job, we thought, was to sweep the parking lot  
19 and collect carts. We took care of the carts great.

20 As far as assisting customers with transporting items  
21 and loading merchandise into customer vehicles, every  
22 opportunity that we had for Paul to interact with  
23 customers, at least when I was the job coach, at least  
24 once a day, when I was job coaching, we would find someone  
25 that was about to empty their cart and had a big bag of



1 dog food or water or something, and we wanted to get the  
2 cart anyways, so we would go and assist them. And I made  
3 sure that Paul tried to do things like that so he would be  
4 visible.

5 Q. Could you show us any of the signs you would use for  
6 that?

7 A. Oh, like I would tell Paul, "We're going to wait for  
8 that cart," and so then he knew that we were waiting. And  
9 I would say, "Let's get the big dog food," and he'd know  
10 that. Or I would say, "Water, let's move the water," and  
11 he would be able to do that for the customer.

12 Q. So as far as the actual process of the work of taking  
13 the purchases into the trunk, explain how that was  
14 performed.

15 A. Once you tell Paul to get something and you start to  
16 show the gesture, he'll do it right away. As long as he  
17 knows it's okay, that's -- usually he's waiting for  
18 permission. He understands what to do. He's just waiting  
19 for permission. That's what it is.

20 Q. All right. Then I see down the list we have -- no,  
21 in the same section -- "properly and safely utilizes cart  
22 retrieval equipment." Ms. Polizzi, in the times you  
23 served as a substitute job coach, did you ever utilize  
24 cart retrieval equipment?

25 A. We did not.

1 Q. And that's the motorized -- the electric cart caddy  
2 that we've been talking about; is that right?

3 A. Correct.

4 Q. Okay. And if you weren't using -- what were you  
5 doing if you weren't using that cart retrieval equipment?

6 A. We actually felt that it was important that Paul  
7 pushed the carts to do work, because he isn't -- you know,  
8 that's his job and we wanted him to actually do the  
9 physical work of pushing the carts and it didn't seem to  
10 be too much for him and he actually enjoyed it, so we  
11 continued that.

12 Q. Did you ever, for any reason, believe you should be  
13 using the electric cart caddy?

14 A. No. I felt that we were even more productive than  
15 the people who used the cart caddy with our system.

16 Q. Can you explain that? What do you mean?

17 A. I felt that me and Paul, we did a method of  
18 continuously sweeping the parking lot back and forth  
19 taking smaller loads rather than waiting until they hung  
20 out in between the cars to get the cart -- electric cart  
21 thing and bring in 30. I thought we did a better job of  
22 keeping the parking lot moving the way we did it  
23 collecting the carts when there was four or five instead  
24 of when there was 30.

25 Q. And when we -- let's go to the next paragraph that

1 starts "Provides customer service."

2 A. Can you make it big for me again? Thank you.

3 Q. We're working on it. Thank you. "Provides customer  
4 service by acknowledging the customer, identifying  
5 customer needs, assisting with purchasing decisions,  
6 locating merchandise, resolving customer issues and  
7 concerns, and promoting products and services, while  
8 maintaining a safe shopping environment." So can you tell  
9 us about how Paul performed any of the tasks he did or did  
10 not perform in that list?

11 A. Well, I will tell you what, Paul was the best steward  
12 of Walmart's parking lot they ever had. He cleaned out  
13 the carts. He picked up the garbage. He'd keep the carts  
14 clean. We got feedback from customers that saw us working  
15 together. And it was obvious I guess that Paul has a  
16 disability and many people were like really pretty proud  
17 that -- felt proud of Walmart that they would hire someone  
18 like Paul. And he was happy and productive.

19 And whenever I received comments from the customers,  
20 and they'd see Paul sweating and stuff, and I'd say, "Oh,  
21 he loves his job," they felt like that was really a good  
22 thing. I think that was a good reflection on Paul. Even  
23 though he didn't directly talk to some customers, that was  
24 a good reflection on Walmart. And the parking lot was  
25 clean.

1 And as far as when we went by and waited for someone  
2 or helped someone put a heavy item or even just waited for  
3 them to get their cart so they didn't have to take it to  
4 the cart caddy, people liked that. We got lots of  
5 positive feedback from customers about the things we did  
6 like that that a lot of other cart pushers might not have  
7 taken the time to do.

8 Q. Do you have any memories of specific instances with  
9 customers?

10 A. Yeah. A lot of times we would see someone -- if me  
11 and Paul saw that, even if it was a couple aisles away, if  
12 we saw it was an older person and they would have to walk  
13 their cart way back to the cart caddy, we would make an  
14 effort to go over there. And they would always be  
15 grateful and say thank you and acknowledge that we went  
16 out of our way to do that. They knew we did.

17 Q. Did anyone at Walmart ever tell you anything about  
18 whether or not Paul was expected to perform the duty of  
19 locating merchandise for customers?

20 A. Never.

21 Q. Did you ever -- we've heard you testify about  
22 positive interactions. Did you ever remember any negative  
23 interactions with customers during your times when you  
24 served as a substitute job coach?

25 A. I really don't.

1 Q. Now, we saw "assisting customers with purchasing  
2 decisions and promoting products and services" as some of  
3 those customer service duties in the cart attendant job  
4 description. Did you have the opportunity to observe in  
5 the parking lot any Walmart employees who were assisting  
6 purchasing decisions or locating merchandise for  
7 customers?

8 A. No. The only other -- like I said, Paul was the only  
9 one there for the first few hours. And once Andy came  
10 in -- he was their first full-time person that worked with  
11 Paul and he was there almost every day that Paul was  
12 because he was the weekly full-time guy -- he didn't -- I  
13 never saw him helping customers with purchases. He did  
14 have a walkie talkie where he could talk to other staff.

15 Q. Okay. Did you ever see whether Walmart ever had  
16 anybody who could assist customers with purchasing  
17 decisions?

18 A. I did. And me and Paul assumed that the greeters  
19 that were there when we first started, they kind of kept  
20 track of the carts and made sure that the carts were full  
21 and they took merchandise and tagged it when it was  
22 returned. They were asked those questions all the time.  
23 And we figured they were in a better position to answer  
24 those things than we would be, so I never stood there and  
25 waited to do that. We were almost always in the parking

1 lot working.

2 Q. What, if any, feedback did you receive from Walmart  
3 managers about job performance?

4 A. None.

5 Q. What, if any, feedback did you receive from other  
6 employees or coworkers at Walmart?

7 A. The other employees I met at Walmart, they really  
8 liked Paul. They thought he was a very hard worker and  
9 did a good job.

10 I am a smoker. So when I worked with Paul, just  
11 before Paul's break, I'd take a break myself. And I  
12 talked to some of the people that were smokers --

13 THE COURT: If we get an objection, I've got to  
14 deal with that before you go on.

15 THE WITNESS: I didn't hear it. Sorry.

16 THE COURT: Go ahead. What's your objection?

17 MR. HARLAN: Just briefly, relevance. She's  
18 talking about what other employees thought of Mr. Reina's  
19 performance.

20 THE COURT: Overruled. Go ahead. You can be  
21 brief.

22 BY MS. VANCE:

23 Q. Yes. You may answer the question.

24 A. And they all thought that it was great and they said  
25 Paul works very hard.

1 Q. Were you ever asked by a Walmart manager to change  
2 anything about the way you and Paul were working?

3 A. Never.

4 Q. Were you ever asked by a Walmart managers or  
5 management to change Paul's job performance in any way?

6 A. Never.

7 Q. If you had ever been asked by Walmart to change  
8 something about the way you were working, what would you  
9 have done?

10 A. We would have changed it.

11 Q. If you had been told by Walmart managers that Paul  
12 Reina should perform the cart pusher job differently than  
13 the way he performed it, what would you have done?

14 A. We would have changed it. We valued Paul's job at  
15 Walmart. We knew how important it was to his life.

16 Q. Now, I want to ask you to -- well, I want to ask you,  
17 you had the opportunity to observe -- excuse me, observe  
18 other cart attendants performing the cart attendant job,  
19 correct?

20 A. Yes.

21 Q. And how would you compare Mr. Reina's work  
22 performance as a cart attendant to what you observed of  
23 the other cart attendants at Walmart?

24 A. I felt that Paul was constantly in the parking lot  
25 and diligent about the carts; whereas the other cart

1 pushers would go away and then come back, and go away and  
2 then come back, and I don't know what they were doing.

3 Q. Okay. And how would you compare Mr. Reina's work in  
4 customer service as a cart attendant to what you observed  
5 other cart attendants?

6 A. I didn't see too many other cart pushers that would  
7 wait at someone's car to collect the cart. As far as that  
8 goes, I think Paul was the only one that did that.

9 Q. Moving on, I'd like to ask you, you testified that  
10 you were his primary job coach later during the  
11 newspaper -- when he had to take a new job as a  
12 newspaper --

13 A. Right.

14 Q. -- deliverer?

15 A. Yes.

16 Q. In general, how would you describe Paul's attitude  
17 about learning new tasks?

18 A. It's pretty good. He's reluctant at first. But if  
19 he trusts you like he trusts people he knows, he'd do  
20 anything for you.

21 Q. And when you eventually did start a new job, did you  
22 have that opportunity?

23 A. Yes, I did.

24 Q. Okay.

25 A. And Paul surprised me at how much he can do.



1 Q. What do you mean by that?

2 A. He only had like the same task at Walmart, you know,  
3 pushing the carts. And he had that routine pretty well  
4 down. And even though the weather changes, that was the  
5 biggest factor in pushing the carts was the weather  
6 basically.

7 The paper route was a lot more difficult. We had  
8 to -- he had to learn, you know, individual houses, which  
9 ones to deliver to, which ones not to deliver to. He had  
10 to cross more streets. We had to deal with dogs and  
11 people and the cars backing out. And Paul just blew me  
12 away with how capable he actually was in learning all  
13 those things.

14 Q. Turning your attention to these years since  
15 Mr. Reina's employment with Walmart ended, did you -- what  
16 role did you have in the search for a new job for  
17 Mr. Reina?

18 A. Well, after -- his regular job coach actually was  
19 working with him keeping him busy when he wasn't working  
20 at Walmart, because we found that if we didn't fill that  
21 void in Paul's life that it was causing some anxiety. So  
22 his regular job coach Matt I think had gone to a  
23 Woodman's, Piggly Wiggly, other stores that had carts so  
24 we could find Paul a job that was similar. And I tried --  
25 I actually tried Woodman's and Piggly Wiggly and I think

1 Matt went to some other places and they would turn him  
2 down.

3 Q. In general terms, the level of compensation for the  
4 job you did find, can you compare that to the Walmart job?

5 A. Paul made like -- I think he makes like 4 cents a  
6 paper and so that was very difficult. Even with 200  
7 papers, he made nothing, almost nothing.

8 Q. Okay. And a little later today we will be watching a  
9 video and we will be seeing you and Paul, you as his job  
10 coach, doing the paper deliveries. And I want to just ask  
11 you kind of to help give us some context and some preview.  
12 Are there similarities to how you were -- how you coached  
13 Paul the way we'll see in the paper route to how you coach  
14 or, you know, interacted as the job assistant at Walmart?

15 A. Right. Because when Paul first started a job, you  
16 actually kind of had to show him and then you have to pair  
17 sign with it. I mean, because the paper route was so  
18 repetitive, I didn't have to show him how to deliver a  
19 paper at 200 houses. But he did have to learn the route,  
20 which was these houses yes, this one no, and then there's  
21 a street, and so that took a while.

22 And the similarity to that and Walmart is the best  
23 way to show Paul is to model, to model skill and to pair  
24 it with some sign, then you ask him to do it. And then  
25 you model, pair it again, and then when you sign it, then

1 he can do the skill. So it was pretty much we use the  
2 same method to teach him the paper route.

3 Q. Now, turning your attention specifically to the  
4 summer of 2015, at that time were you working as personal  
5 aide for Mr. Reina or his foster brother?

6 A. Yes.

7 Q. And in that capacity were you in the home?

8 A. Yes.

9 Q. Okay. Once Paul was no longer scheduled to work at  
10 Walmart, what did you observe about how his life was  
11 different?

12 A. Well, breaking Paul's routine, like a long-term  
13 routine like getting up every day, getting ready for work,  
14 going to work, I was there in the mornings then. He'd get  
15 up, take his bath, and then there's no work. And it  
16 was really -- I tried to -- because I also was concerned  
17 about Donny, and Donny needs more like therapy, so me and  
18 Donny have a regular routine of going swimming, stuff like  
19 that, and we would take Paul with us. But those were not  
20 the activities that he was used to, so it caused quite a  
21 bit of anxiety.

22 And even if we just stayed home and did nothing, Paul  
23 really missed that block of work in the morning and going  
24 with the job coach and getting out in the community. And  
25 even though I tried to fill that void with things that

1 were more better to work with Donny and Paul together,  
2 like they both like to swim, it didn't fill the void for  
3 Paul.

4 And I saw increased anxiety. Even, you know, even at  
5 one time he even lashed out at me. But he didn't hurt me.  
6 He was just anxious and he didn't know what to do with it.

7 Q. Well, can you maybe demonstrate or give us a better  
8 idea or some more details of what would happen in the  
9 morning when Paul didn't have work?

10 A. You can tell Paul has a lot of like outward physical  
11 signs of his anxiety and it will begin with noises.  
12 You'll hear the noises. And you can go and intervene  
13 sometimes and that would work. And then the next thing  
14 will be you will actually see an increase in his heart  
15 rate, because I take his pulse. But you can see him  
16 sweating and start turning his hands. And it will  
17 escalate from there if you don't make an intervention  
18 there.

19 So I had a lot more of that before Paul found the  
20 paper route. There was a lot of that because of just the  
21 break in his routine. Even though we tried to fill that  
22 with other activities, it wasn't the work that he was  
23 doing before. So nothing that I did with Paul before I  
24 got the paper route was considered work. We went  
25 swimming, we went walking, we'd do stuff in the house, but

1 it wasn't work.

2 Q. Okay. Did Paul continue to wake up in the morning  
3 and expect?

4 A. Paul woke up in the morning. Matt would never show  
5 up to pick him up because he didn't have the job. And  
6 Matt didn't come, so we tried to like fill the routine.  
7 But it wasn't the work, you know.

8 I mean, so Paul would get up, take a bath. Even  
9 though Matt would come to take him to do some activity or  
10 look for a job, he wasn't getting the work. And I think  
11 that physical exercise was really good for him.

12 Q. And how do you know that he was expecting to go to  
13 work?

14 A. It was his routine.

15 Q. And in general, I want to ask you, what did the loss  
16 of Paul's job at Walmart mean for your whole family?

17 A. It was devastating, because even though it seemed  
18 like it was only a Walmart job, for Paul this was a kid  
19 who was actually thrown away as a kid, taken in, given  
20 school, training. We had all these plans for what he  
21 would do later in life. And the main part of it was just  
22 to be a productive member of society and have a job and  
23 have something to do and be a part of a community and do  
24 things. And Walmart gave all that to Paul.

25 He was with a bunch of his peers, which, you know, if

1 he was sitting at home, he wouldn't get to see anybody.  
2 He got to meet and see different people. And losing that  
3 job kind of took that all away.

4 I think the only thing that my sister wanted for Paul  
5 that would be lasting would be to get him his own home.  
6 That's about the only thing you can own if you're on SSI.  
7 And so she wanted to make sure that Paul would have his  
8 own home. If something were to happen to her or her  
9 husband, Paul would have his own place.

10 And Paul is independent. He's not like her son. Her  
11 son could inherit her things. Paul is on his own. And  
12 she really worked hard to make a life for him so he could  
13 be as independent as he could. And with the loss of the  
14 job at Walmart, just the whole dream kind of crumbled,  
15 everything that we had hoped for.

16 MS. VANCE: I tender the witness. I have no  
17 further questions at this time.

18 THE COURT: Cross-examination.

19 MR. HARLAN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. HARLAN:

22 Q. Good morning -- good afternoon. I'm sorry. How are  
23 you?

24 A. I'm good.

25 Q. We had a chance to meet last year.

1 A. Yep. I remember you from Milwaukee.

2 Q. So I'm going to ask you a few questions. Let me know  
3 if you're not able to hear any of the questions or  
4 understand them and I'll try to be clearer.

5 THE COURT: Mr. Harlan, pull the microphone down  
6 so it won't be in your face. Push it down, then tip it up  
7 at the end. There you go.

8 MR. HARLAN: Thank you, Your Honor.

9 BY MR. HARLAN:

10 Q. So I want to start by just talking about how often  
11 you actually worked with Paul as his job coach at Walmart.  
12 So is it fair to say you think that's about 30 or 40  
13 times?

14 A. Something like that.

15 Q. Okay. And you believed you only worked once after  
16 Mr. Coppernoll returned from his health-related issues,  
17 correct?

18 A. I think so, yeah.

19 Q. Okay.

20 A. After he got healthy from one health issue, he was  
21 usually good for a long time.

22 Q. Right. So you think you just worked one time after  
23 that?

24 A. Yeah.

25 Q. All right. And you really never had any discussion

1 with anyone at management at Walmart in terms of what the  
2 full range of his job duties were, correct?

3 A. No. No one ever approached me or talked to me. We  
4 just went and worked there all day and no one ever said a  
5 word.

6 Q. All right. And at no point did you go and talk to  
7 anyone in management?

8 A. I wasn't his main job coach.

9 Q. Right. But the question --

10 A. So I didn't want to cause any trouble when I was  
11 there one day.

12 Q. Sure. I understand that. But just to be clear, you  
13 never went to anybody in management?

14 A. No. I guess I felt like most employees, that if  
15 you're doing the job and they don't come to you that  
16 you're doing a good job.

17 Q. Right.

18 THE COURT: Let's just -- you'll get a chance to  
19 elaborate if the EEOC counsel wants to come and clarify  
20 some things. But at this point, just try to listen to  
21 Mr. Harlan's questions and then just answer what he asks.

22 THE WITNESS: Okay.

23 BY MR. HARLAN:

24 Q. So the answer is no, you never went to anyone in  
25 management to ask what the full scope of Mr. Reina's



1 duties were?

2 A. No, I did not.

3 Q. Okay. All right. Now, when you began serving as  
4 Mr. Reina's job coach at Walmart, your sister, Ms. Slaght,  
5 was very clear about what her expectations were in terms  
6 of what you were supposed to be doing, correct?

7 A. Yeah, what she wanted Paul to accomplish.

8 Q. Right. And specifically what she told you your role  
9 was, was to be his eyes and ears, correct?

10 A. Exactly.

11 Q. And by being his eyes and ears, that meant the job is  
12 Paul's. You are there, because of his impairments, to be  
13 his eyes and ears, to be able to give him guidance in  
14 terms of "Hey, watch out for this," or if he hears  
15 something coming to alert him to it, but it's not to do  
16 his job, fair?

17 A. It was to assist Paul to get the job done.

18 Q. Right.

19 A. Whatever it took to assist Paul to get the job done.

20 Q. And so you understood your sister's directive to be  
21 his eyes and ears to entail doing his job for him?

22 A. No, I didn't understand that to be the case.

23 Q. All right. So your understanding was you weren't  
24 supposed to be doing his job for him, correct?

25 A. I was to assist Paul to do the job, do "the job."

1 Q. Okay. And so did I take it, when you say "assist  
2 Paul doing the job," you thought it would be appropriate  
3 then to take on some of his job duties, fair?

4 A. Yep. I only did that when it was necessary to keep  
5 the parking lot clear. Like when, you know, when the  
6 parking lot was super full of carts, then I might assist  
7 Paul in collecting some.

8 Q. Well, isn't it true that every shift that you worked  
9 with Mr. Reina, you actually did part of his job by going  
10 yourself to get carts and bringing them to a central  
11 location?

12 A. Actually, probably not every shift that I worked with  
13 him. A couple of times, if it was very slow in the  
14 parking lot, then I made Paul do everything.

15 Q. So your testimony is that you weren't getting carts  
16 every shift; is that what you're saying?

17 A. Yes.

18 Q. Tracy, are you able to pull up 130, lines 18 through  
19 23? And if not, then I will do it the old-fashioned way.  
20 Your Honor, with your permission, I'd just like to --

21 THE COURT: I understand. Why don't you just  
22 read it to her and see how far that gets you.

23 MR. HARLAN: All right.

24 THE COURT: In other words, do it the  
25 old-fashioned way.

1 BY MR. HARLAN:

2 Q. All right. So, Ms. Polizzi, you remember coming to  
3 my office in Milwaukee to have your deposition taken?

4 A. Sure.

5 Q. And on that occasion -- you swore to tell the truth  
6 on that occasion, right?

7 A. Yes, I did.

8 Q. And you did that, right? Is that yes?

9 A. Yes.

10 Q. Okay. So I think I asked you this question at your  
11 deposition at that time:

12 "But your testimony is that every shift, throughout  
13 the shift, you assisted Paul by yourself going to get  
14 carts out of the corral and then bringing them to a  
15 central location where you could consolidate them?

16 "ANSWER: I did."

17 Does that refresh your recollection now in terms of  
18 whether every shift you were going to gather carts  
19 yourself for --

20 A. Could you read that, what you said, again to me?

21 Q. Okay. "But your testimony is that every shift,  
22 throughout the shift, you assisted Paul by yourself going  
23 to get carts out of the corral and then bringing them to a  
24 central location where you could consolidate them?

25 "ANSWER: I did."

1 A. Okay. But the "yourself" part, I guess I did say  
2 that. But there was shifts that I made Paul do all the  
3 carts and I just steered them, so to speak. So I'd have  
4 my finger in the beginning of the carts to steer them.  
5 But there was actually shifts where it was slow at Walmart  
6 and I wasn't needed to help. I would let Paul do all of  
7 it.

8 Q. Okay. But my question then wasn't --

9 A. I guess I didn't understand when you questioned me in  
10 Milwaukee that you meant, oh, I did work every time.  
11 That's not what I thought you meant by that question.

12 Q. Would you like to give us an estimate then how many  
13 of the occasions that you worked with him that you  
14 actually did cart --

15 A. I could say there was probably only a couple days  
16 that I didn't assist. But there was two or three times  
17 where I didn't assist Paul where it was slow enough that I  
18 could let him do everything.

19 Q. So on a typical day, fair?

20 A. On a typical day.

21 Q. And on a typical day, what you would do is you would  
22 take part of the parking lot that Mr. Reina was  
23 responsible for and you would go gather up carts and bring  
24 them to a central location?

25 A. We would gather carts. I never would leave Paul

1 alone. We were always together and we gathered the carts  
2 together. I don't believe that Paul would let me do the  
3 job and just stand there. That would be awkward and cause  
4 anxiety for him. So he had to -- I mean, I could work  
5 alongside Paul, but I couldn't do work and have him not do  
6 it or he -- that would be uncomfortable for him. Like I  
7 said, I just -- I felt that when I did assist Paul with  
8 carts, it was because of the need.

9 MR. HARLAN: Why don't we go to page 111, lines 3  
10 through 17.

11 Can we try to play that, Your Honor?

12 THE COURT: If you can get it up there fast  
13 enough so that the witness can see it, that would be  
14 great. Maybe you can make that window a little bigger.

15 MS. TOMPKINS: I can.

16 THE COURT: Ms. Polizzi, can you read that?

17 THE WITNESS: Yes.

18 THE COURT: Okay. If it's good enough for the  
19 witness, it's good enough for me.

20 MS. TOMPKINS: I can make it bigger for you.

21 MR. HARLAN: It's not up on the screen.

22 BY MR. HARLAN:

23 Q. So we're looking at page 111, lines 3 through 17. So  
24 this is from your deposition again.

25 A. Okay.

1 MS. TOMPKINS: I apologize.

2 MR. HARLAN: And if you can't get to it quickly,  
3 we'll just read the transcript. Page 111, lines 3 through  
4 17.

5 (Video deposition testimony of Margaret Polizzi  
6 played.)

7 BY MR. HARLAN:

8 Q. All right. So that sounds to me like what you're  
9 saying is Mr. Reina is somewhere to the left and you're to  
10 the right and then you're gathering carts separately and  
11 then meeting in the middle. Did I misunderstand your  
12 testimony?

13 A. That is what we would do if it was busy, when it was  
14 busy and we both needed to. Like the biggest thing was  
15 when we got to Walmart, we just wanted to make sure that  
16 the department store and the grocery cart things were  
17 filled. So all day that was our goal.

18 So if Paul was doing well and there wasn't a lot of  
19 cars and I could let him work beside me and I could go on  
20 the other side, that was great. If it was busy and tight  
21 spaces, me and Paul would have to work as a team close  
22 together in one thing. And if it was not very busy, there  
23 very few cars and very few carts, then I could direct Paul  
24 to do the entire job himself. That's what we were working  
25 toward. All three different things like that were to

1 teach Paul to do the job independently.

2 Q. But Mr. Reina had been at Walmart doing this same  
3 position since 1999, right?

4 A. But our expectations of him had changed. Once he  
5 learned to do the job pretty well by himself, then we can  
6 expect more independence from him. So that parallel  
7 working and having him go to get carts way on the other  
8 side of the parking lot, those were all different types of  
9 training and trust and trust building and learning to see  
10 what Paul's capabilities were. Even after 17 years,  
11 people can still learn.

12 Q. Thank you, Ms. Polizzi. I'm still confused because  
13 if he had been there for 10 or 15 years at the point you  
14 start working with him, it's the same parking lot, right?  
15 Is that yes?

16 A. Yes.

17 Q. And so the parking lot hasn't changed; the  
18 configuration of the parking lot is the same, right?

19 A. Yes.

20 Q. They don't have new aerodynamic carts or anything  
21 that's special about the carts, right?

22 A. No.

23 Q. So why would you need to model behavior if he's been  
24 doing the position for 10 or 15 years when you start  
25 working with him?

1 A. As I said, we can -- if Paul gets to a certain level  
2 and he -- if we can trust that he won't need eyes and ears  
3 in the parking lot, there's an area of the parking lot  
4 that didn't have a lot of cars, we would take the  
5 opportunity to let Paul be more independent. Do you  
6 understand how that might happen?

7 Q. So you had testified that you never would send Paul  
8 to a different part of the lot separate from you?

9 A. Where I couldn't see him.

10 Q. Okay. So you would send him to other areas of the  
11 parking lot, but he would be within your line of sight?

12 A. Where I could see him, correct.

13 Q. All right. All right. And you would agree with me,  
14 would you not, that the activity you describe where you  
15 are going to one part of the lot to physically move carts  
16 somewhere to help Paul do his job is completely  
17 inconsistent with what your sister told you your job was  
18 to do, which is you're the eyes and ears? She didn't say  
19 eyes, ears, hands and arms, did she?

20 A. No. She did want Paul to be successful at Walmart  
21 and be a good employee and have Walmart value him, so  
22 that's what we did. Instead of standing there twiddling  
23 my thumbs, I assisted him to make him a better employee.  
24 That was my only sin.

25 Q. Ms. Polizzi, I'm not here to cast dispersions on you.



1 I'm just trying to understand what the facts are. So you  
2 felt it was necessary for purposes of enabling Paul to do  
3 his job, to have to do that to model the behavior for him,  
4 correct?

5 A. No. Just if the parking lot was full, we wanted to  
6 make sure it got swept. So if Paul was doing his upmost  
7 to get it and I was able to, I would collect more carts so  
8 Paul could get his job accomplished quicker.

9 Q. And so you said that there were occasions when the  
10 parking lot was busy that you would help out by doing part  
11 of it and Mr. Reina would do part?

12 A. Correct. We would get both sides of the aisle in one  
13 swoop so we could get the parking lot cleared quicker.

14 Q. Because in that particular situation it was important  
15 to get the carts to the store, right?

16 A. Exactly.

17 Q. Wouldn't that be an optimal situation for that cart  
18 caddy?

19 A. I don't think so, because it's hard when there's more  
20 traffic and more people. It's harder to move a longer  
21 line of carts.

22 Q. Okay. So now one of the things counsel for the EEOC  
23 didn't ask you about is your personal observations of  
24 Mr. Coppernoll. You know Mr. Coppernoll, right?

25 A. Yes.

1 Q. And one of the things you mentioned to me in the  
2 deposition was that when you were at the Walmart store on  
3 your regular job, which is you're a paramedic with the  
4 Beloit Fire Department, correct?

5 A. Correct.

6 Q. There were several occasions when you saw, with your  
7 own eyes, Mr. Coppernoll using the cart caddy, operating  
8 the cart caddy, with Mr. Reina trailing behind him, fair?

9 A. On two occasions I saw that.

10 Q. Okay. And your sister had given an expressed  
11 directive that that was not to be done, correct?

12 A. Correct, because she actually wanted Paul to do the  
13 physical work. We felt that was important for him.

14 Q. So what does it say to you that his -- and you would  
15 agree Mr. Coppernoll is his primary job coach, right?

16 A. Correct.

17 Q. So what does it say to you that the primary job  
18 coach, in direct opposition to what his boss essentially  
19 told him, felt it necessary to use a cart caddy to do the  
20 job?

21 A. I didn't question it because I didn't know if he was  
22 training Paul to use it or what he was doing with it, so I  
23 wasn't sure.

24 Q. Okay. And the reason you didn't use the cart caddy  
25 is not because you felt that was a problem; it was because

1 your sister told you not to use it?

2 A. It was because she felt, and I agreed, it was  
3 important for Paul to get the physical activity --

4 Q. Right.

5 A. -- of pushing the carts.

6 Q. But you would agree with me that as an employee, or  
7 as an associate of Walmart, that the principle concern is  
8 what's best for Walmart, not a concern about he needs to  
9 get physical activity while at work; you would agree with  
10 that, right?

11 A. Right. But as the job coach, we should be concerned  
12 about everything that has to do with Paul, including his  
13 wellness.

14 Q. And I apologize. I'm going to jump around a few  
15 places here. I remember from your testimony you mentioned  
16 helping Mr. Reina punch in. Is that something you did  
17 every time you were working with him as his job coach?

18 A. Yeah. Part of his routine was actually to follow us  
19 through the store. We would pick the best path for Paul,  
20 like the one with least customers, and take him to the  
21 back and he would punch in himself.

22 Q. You said you would pick the path --

23 A. Mm-mm.

24 Q. -- to go back to the area where are the time clock  
25 is?

1 A. Yep.

2 Q. Why did you have to do that?

3 A. Because a lot of times the aisles were crowded. So  
4 we would pick the quickest, easiest way, like most people  
5 would on their way to work, probably pick the best path  
6 with the least people, and then Paul would follow us.

7 Q. And is that because, based on your experience, that  
8 Mr. Reina couldn't make those choices, that he needed you  
9 to make them?

10 A. No. It was just routine and he'd just follow the  
11 routine.

12 Q. Okay. And so where was the time clock located when  
13 you were serving as Mr. Reina's job coach?

14 A. Behind -- there's a bathroom and a customer service  
15 and you go in the back hallway. I guess it's across from  
16 the manager's room, from what I remember.

17 Q. But it's in a noncustomer area, right?

18 A. Correct.

19 Q. And the reason that you went with Mr. Reina, because  
20 this is not in the parking lot, right, this inside the  
21 store?

22 A. This is inside the store in the back.

23 Q. There's no cars buzzing around in the store, right?

24 A. No.

25 Q. But the reason that you went with Mr. Reina to help

1 to get him to clock in and clock out is because that's  
2 something he couldn't do on his own, fair?

3 A. No. It's because of Paul's routine, because unless  
4 you give him permission, he wouldn't -- I mean, we would  
5 have had to go in and tell him he was expected to go by  
6 himself, otherwise he's going to wait for someone to lead  
7 him because that's how he was trained.

8 Q. Okay. But why wouldn't you train him? If he was  
9 capable of being able to punch in and punch out, why isn't  
10 that something that you would want him to know how to do?

11 A. I'm not sure.

12 Q. Well, did Ms. Slaght tell you that you weren't  
13 supposed to let him --

14 A. I don't think we thought that was a big deal for us  
15 to go in back with Paul. I didn't think that was a  
16 problem.

17 Q. Was there ever any occasion when you were his job  
18 coach where he was able to punch in, pouch out for lunch,  
19 punch out for the day?

20 A. Yes, there was, because I stopped at the bathroom and  
21 he went in himself and punched in.

22 Q. Okay. So you don't what happened, whether it was  
23 somebody else who punched him in and punched him out?

24 A. I don't know. It was one occasion.

25 Q. So you think this would happen, right?

1 A. He got punched in somehow. I assume he did it.

2 Q. Am I correct that that clock is fairly easy to  
3 navigate, right?

4 A. Yes.

5 Q. It has pictures -- well, strike that. It has  
6 labels -- *Punch In, Punch Out, Clock In, Clock Out* --  
7 right?

8 A. Correct, but you have to hit the right time.

9 Q. Right. And that's pretty straightforward, right?

10 A. Yes.

11 Q. Okay. Now, when you were working the parking lot  
12 you, would dawn a Walmart vest, right?

13 A. I didn't at first.

14 Q. But ultimately, in serving as Mr. Reina's job coach,  
15 you put on a vest?

16 A. A high-visibility vest, yes.

17 Q. With *Walmart* on it, right?

18 A. I don't believe mine said *Walmart*. It was just a  
19 high-visibility vest.

20 Q. Similar to what the other cart pushers had?

21 A. Exactly.

22 Q. As a result of having that on, customers would, from  
23 time to time, would approach you because they assumed you  
24 worked at Walmart, right?

25 A. Correct.

1 Q. And so because of the role you were in, you in effect  
2 were engaging with Walmart's customers as if you were a  
3 Walmart associate, right?

4 A. Yep.

5 Q. And what kind of customer service training had you  
6 gone through in order to be able to communicate with  
7 Walmart's customers in a manner that they wanted you to  
8 communicate with them?

9 A. I did not have any training from Walmart on customer  
10 service.

11 Q. So as a result of you being in a position that you  
12 were in, we had a situation where somebody who had not  
13 been trained -- by the way, do you know what the 10-foot  
14 rule is?

15 A. No.

16 Q. Okay. So as a result of you being Mr. Reina's  
17 full-time job coach on the occasions that worked with  
18 him --

19 A. I wasn't his full-time job coach.

20 Q. I misspoke. So on the occasions that you were his  
21 job coach, there would be some aeriels where you were  
22 engaging with Walmart customers and having no clue in  
23 terms of how Walmart wanted you to engage with their  
24 customers?

25 A. I did not.

1 Q. So you mentioned that on the occasions you worked  
2 with Mr. Reina, that from eight or 8:30 to ten, it would  
3 be just be you and Mr. Reina in the parking lot?

4 A. Correct.

5 Q. So on those occasions, to the extent a customer came  
6 into the parking lot and that customer had a question,  
7 even a basic question like "Hey, where's the bathroom?"  
8 The only person they could get an answer to to that  
9 question in the parking lot would be you, right?

10 A. Well, in the parking lot I can anecdotally tell you  
11 that when people asked us for something, it would normally  
12 be they wanted a cart so they could lean on it to get into  
13 the store and we did that quite often.

14 Q. Right.

15 A. We would have carts and someone wanted one, we'd give  
16 them one. It didn't take but a gesture to do that. We'd  
17 go and give them a cart. Paul was successful at that.

18 Q. And we're anticipating evidence that from time to  
19 time customers do ask questions. And my question is  
20 simply if that were to happen -- a customer, you know, has  
21 a kid running late to a soccer match or something; wants  
22 to know, "Hey, what's the best way to get in to get  
23 Gatorade?" -- the only person who could give that  
24 information to them in the parking lot, on weekdays from  
25 eight to ten, would be you, right?



1 A. Yes.

2 Q. Now, I think one of the things you said when  
3 Ms. Vance was asking you questions during direct  
4 examination is that another role you played in Mr. Reina's  
5 performance of his job duties -- and let me stop. You  
6 would agree that pushing carts from the parking lot to the  
7 store is, without question, an essential function of his  
8 job, right?

9 A. Correct.

10 Q. All right. So I think what I heard you say is that  
11 your role in that activity with Mr. Reina when you were  
12 his job coach would be to steer the cart with one finger  
13 left or right --

14 A. Yep.

15 Q. -- when there were these rows of carts that he's  
16 gathered them up in the parking lot and moving them to the  
17 store, right?

18 A. Yep.

19 Q. Okay. Can you play clip G from the cart pusher  
20 video?

21 So what I'm going to show you is a row of carts in a  
22 Walmart parking lot. And I'm going to first ask you, does  
23 that look like a row of carts like you and Mr. Reina would  
24 be dealing with when you were his job coach.

25 (Video played.)

1 THE WITNESS: That's not Paul.

2 MR. HARLAN: Can you stop it for one second?

3 THE WITNESS: That's not Paul.

4 MR. HARLAN: Put it on pause.

5 BY MR. HARLAN:

6 Q. So does that look like a row of carts that you and  
7 Mr. Reina would push into the store from the parking lot?

8 A. Yes.

9 Q. Okay.

10 A. It looks like them.

11 Q. So first of all, you're not disputing that that's one  
12 person doing the job, right?

13 A. Mm-mm.

14 Q. Is that yes?

15 A. Yes.

16 Q. Okay. And you want this jury to believe that you  
17 could manipulate a row of carts like that with one finger  
18 left or right?

19 A. You must have misunderstood me. I said Paul pushed  
20 and I steered. So Paul is just like the guy in the back  
21 and all I did was walk in the front.

22 Q. Right. And I think your testimony was that you used  
23 one finger to move the carts left or right, depending on  
24 the direction you want them to go in, right?

25 A. Right. As long as Paul was pushing, I could steer

1 with one finger or I could stop him if a car was coming.

2 That's why I took the position in the front.

3 Q. So just so I'm clear, and I'll move on, your  
4 testimony is that you could manipulate those carts left or  
5 right just with one finger?

6 A. Yes.

7 Q. We're done with that. So in addition to the carts,  
8 you also helped Mr. Reina perform his job by pushing  
9 flatbed carts, right?

10 A. On occasion.

11 Q. And again that's doing something that's part of his  
12 job, right?

13 A. Correct.

14 Q. And you also saw other cart pushers doing that  
15 activity, right?

16 A. Occasionally. Like I said, there was only one other  
17 guy most of the time when we worked, one full-time guy,  
18 unless it was slated to be a busier day.

19 Q. Is it fair that based on your observations that  
20 customer service is an important aspect of what cart  
21 pushers do?

22 A. I don't believe it is.

23 Q. Okay. Would you agree with me the whole purpose of  
24 even having carts available for customers is to facilitate  
25 the shopping experience with the customer, right?

1 A. Correct, and to keep the parking lot clear for  
2 safety.

3 THE WITNESS: I wish this was coffee. Sorry.

4 MR. HARLAN: I'm not that bad, am I?

5 THE WITNESS: I'm sorry.

6 MR. HARLAN: I'm going to try to move through  
7 this.

8 THE COURT: I will take note. Maybe we'll put  
9 that in the suggestion box.

10 BY MR. HARLAN:

11 Q. So I think you testified that you would be in a  
12 parking lot helping Mr. Reina put items in customers'  
13 cars, too, right?

14 A. Occasionally we would take the opportunity to do  
15 that.

16 Q. Do you have any reason to believe, as a  
17 nonemployee -- and you never were employed by Walmart,  
18 right?

19 A. Never.

20 Q. Do you have any understanding that you would be  
21 covered by Walmart insurance for what you're doing in  
22 their parking lot in accessing customer cars?

23 A. I felt we were doing good --

24 Q. Yeah, but my question is --

25 A. -- helping people. I never worried about the

1 liability. I knew if I was injured helping Paul, my  
2 sister would probably compensate me for that.

3 Q. And did you think also you might be able to have a  
4 claim against Walmart?

5 A. Never. All we wanted from Walmart was a job.

6 Q. And he got that for 16 years, right?

7 A. That's right.

8 Q. Going back to the cart caddy, you would agree with me  
9 that on the occasions that you were on the job with  
10 Mr. Reina, you saw the other cart pushers using the cart  
11 caddy?

12 A. Occasionally, yes.

13 Q. Okay.

14 A. When Paul first started, they didn't even have cart  
15 caddies and the carts were different. They were plastic  
16 and they didn't steer as well.

17 Q. But in the latter part --

18 A. A lot of times the cart caddy is broken as well. It  
19 hardly ever works in the winter.

20 Q. So you're saying it was only occasionally that you  
21 would see other cart pushers, once the cart caddies  
22 arrived, using it?

23 A. Probably because they used the cart caddies when they  
24 have a lot of carts. And when me and Paul would work the  
25 morning, there would be no carts in the parking lot.

1 THE COURT: You know, our objective in the sound  
2 system is not require people to lean into it. But if you  
3 keep your chair so you're about a foot away from the  
4 microphone, we should be able to hear you just fine if you  
5 just talk. Scoot up.

6 THE WITNESS: I apologize to everyone.

7 THE COURT: That's all right. Scoot up a little  
8 bit. A little more. There, that should be just right.

9 BY MR. HARLAN:

10 Q. All right. So again, just so I'm clear, your  
11 testimony today is that it was only occasionally used; it  
12 wasn't something on a regular basis?

13 A. You asked me how often I observed it --

14 Q. Yes.

15 A. -- didn't you? Well, like I said, me and Paul would  
16 be there first thing in the morning. Then there was no  
17 line of carts in order for them to use the cart caddy, so  
18 we rarely saw it.

19 Q. And it wasn't used with regularity?

20 A. Like I said, that was what I saw.

21 Q. Right. Why don't we revisit your testimony in your  
22 deposition. So if we could go to page 82, line 23 to page  
23 83, line 6 to see if that refreshes your recollection.

24 A. I just see a big flower.

25 THE COURT: We'll give them a minute to get it

1 up.

2 MR. HARLAN: And if we don't get it in a minute,  
3 we're going to move along and I will just read it.

4 So, Tracy, again it's 82, line 23 to page 83, line 6.

5 MS. TOMPKINS: 83, line 6?

6 MR. HARLAN: Yes. Page 82, line 23 to page 83,  
7 line 6.

8 THE COURT: Now, you said you were using this to  
9 refresh her recollection, which means she can just look it  
10 over and see if that reminds her of what her testimony is.

11 MR. HARLAN: Thank you for pointing that out,  
12 Your Honor. Actually, I'm using it for impeachment  
13 purposes.

14 THE COURT: That's different. Okay. Go ahead  
15 and play the clip then.

16 (Video deposition testimony of Margaret Polizzi  
17 played.)

18 BY MR. HARLAN:

19 Q. Do you recall that testimony?

20 A. I do.

21 Q. Now, you talked about communicating with Mr. Reina  
22 using American Sign Language, ASL?

23 A. Correct.

24 Q. And would you characterize his ASL abilities as being  
25 rather primitive?

1 A. He's learned every -- he knows most of the vocabulary  
2 that we have been able to teach him.

3 Q. So you wouldn't characterize his ASL abilities as  
4 primitive? Shall I play that portion of your deposition?

5 A. I'm not sure what "primitive" means. It almost  
6 sounds evil. I mean, he knows very few words. But even  
7 to learn one sign is difficult. It's not primitive.

8 THE COURT: We don't need the deposition for  
9 this. So he has a -- it seems like it's pretty fair to  
10 say he has a pretty basic --

11 THE WITNESS: He has a limited vocabulary. Could  
12 we say that, limited?

13 BY MR. HARLAN:

14 Q. Okay. So it would be difficult, for instance, if  
15 there was a customer in the parking lot who happened to  
16 know ASL to be able to ask him questions directly through  
17 ASL to get an answer to something, right?

18 A. It depended on what they asked him.

19 Q. So what kind of questions could he answer from a  
20 customer using ASL?

21 A. It depends on what they asked him. If they asked him  
22 where the bathroom is, maybe he could point.

23 Q. Did you ever see him do that?

24 A. No one asked him.

25 Q. So it would be utter speculation to say that he would



1 be able to communicate with a customer through ASL about  
2 pointing to the bathroom, fair?

3 THE COURT: You've asked and she gave the answer,  
4 so you can move on.

5 BY MR. HARLAN:

6 Q. Now, you don't have any specialized training as a job  
7 coach, right?

8 A. I do not.

9 Q. No training in job placement force, right?

10 A. Nope. I have had a lot of practice though.

11 Q. And you didn't participate in any of the training  
12 Mr. Reina received at Walmart, correct?

13 A. No.

14 Q. Yes, you did?

15 A. No, I did not.

16 Q. Okay. And based on your knowledge of Mr. Reina, he  
17 has some issues with his peripheral vision, correct?

18 A. Like I said, it depends on if he's paying attention.  
19 I'm not really quite sure about Paul's vision. What I  
20 learned from doing the paper route after working at  
21 Walmart was that Paul had much better vision than I  
22 assumed.

23 Q. Okay. At your deposition you characterized his  
24 peripheral vision as not being adequate. Do you recall  
25 that?

1 A. I said if you stand in his peripheral vision, he  
2 won't see your sign. If I remember right, that's what we  
3 were talking about in context, about whether he could see  
4 me signing. And I said if I stand to the side of him, he  
5 would not be able to see me.

6 Q. And why is it he wouldn't be able to see you, from  
7 your perspective?

8 A. He won't know I'm talking to him unless I get his  
9 attention.

10 Q. Focus was an issue for Mr. Reina in terms of staying  
11 on task, correct?

12 A. Occasionally.

13 Q. Okay. And in addition to that, there would also  
14 occasions, unfortunately, when he would be banging his  
15 head against the wall, right?

16 A. He did have anxieties at times.

17 Q. And those anxiety issues and the head banging  
18 occurred long before he stopped reporting to work at  
19 Walmart, correct?

20 A. I think we did see some of it, but that was kind of  
21 the -- that would be a high point of an anxiety attack for  
22 him to do that kind of action. He was pretty predictable  
23 in how his anxiety came. You could always count on the --  
24 like I said, it started with noises and the hand wringing.  
25 And if you didn't make intervention, the last part of his

1 anxiety would be him hitting his head and then usually the  
2 anxiety would stop.

3 Q. So just to be clear though, these problems with  
4 anxiety preexisted any of the issues he had at Walmart,  
5 correct?

6 A. They actually didn't start until he was an adult.  
7 But, yeah, we did see it before the end of Walmart.

8 Q. And I think you talked about Mr. Reina having a good  
9 relationship with other people at Walmart. You never --

10 A. I think I said that they thought he was a good  
11 worker.

12 THE COURT: Hold on. Kind of wait for the  
13 question and then you'll find out what you really need to  
14 answer.

15 THE WITNESS: Yes, sir.

16 THE COURT: It will go much more efficient if we  
17 just get your question and get your answer. Go ahead,  
18 Mr. Harlan.

19 BY MR. HARLAN:

20 Q. And there was an occasion where you heard any  
21 inappropriate comments made about Mr. Reina while you were  
22 his job coach, right?

23 A. No.

24 Q. So the answer is no, you never heard any  
25 inappropriate comments about him, right?

1 A. The answer is no, I did not hear any inappropriate  
2 comments about him.

3 Q. Thank you. Can we go -- Your Honor, I'd like to just  
4 play a part of the clip that the EEOC prepared, just very  
5 briefly, clip 5.

6 THE COURT: Is that clip of the cart pusher  
7 video?

8 MR. HARLAN: No. It's the EEOC's video and just  
9 ask -- it's during the paper route.

10 THE COURT: Okay. All right. Yeah, go ahead.

11 MS. TOMPKINS: Which clip?

12 (Discussion held off the record.)

13 MR. HARLAN: So can you stop it?

14 BY MR. HARLAN:

15 Q. And so maybe start it again. So I really just want  
16 to have you describe for the jury what you're  
17 communicating to Mr. Reina and what response he's giving  
18 other than moving his hand up and down. That's really all  
19 I'm showing you.

20 THE COURT: Okay. And before we do that, this  
21 clip is 31 seconds, right? Yes, 31 seconds. Just play it  
22 once --

23 MR. HARLAN: Yes, sir.

24 THE COURT: -- and then we'll get the questions.

25 MR. HARLAN: Why don't you go ahead, Tracy.

1 (Video played.)

2 BY MR. HARLAN:

3 Q. So if you could just describe, because I think you  
4 described for the EEOC some of the signs, what did he do  
5 that would indicate that -- for instance, when you asked  
6 him how he was doing -- that he gave you a response to  
7 that question?

8 A. A lot of my interaction with Paul is nonverbal. And  
9 just that Paul was attending to me, I know he was  
10 listening to me.

11 Q. When you say attending to you --

12 A. He's looking at me --

13 Q. Okay.

14 A. -- he's watching my sign, because he'll close his  
15 eyes on you if he isn't willing to listen to you. I mean,  
16 Paul has things like -- this is cooperative. If he  
17 doesn't want -- if he doesn't want anything to do with me,  
18 he'd actually go like this so he can't see you. It's like  
19 telling me to shut up, but only not. He just closes his  
20 eyes and he won't pay attention to you, even though he's  
21 not -- but it was part of his routine that I would  
22 probably come today. He knew he -- to expect me and that  
23 we would probably go swimming and he'd deliver papers, so  
24 he's waiting for me.

25 Q. So the question is what did he communicate back to

1 you? We know he's looking at you.

2 A. When he -- he did the sign "fine." So, okay, I said  
3 all that to him and he said "fine" and he's looking at me.  
4 To me, that's Paul's -- he's ready to go.

5 Q. So the movement of his hand?

6 A. He repeated "fine," that's what he did. That was  
7 "fine."

8 Q. So that movement means "fine"?

9 A. Yeah. I said, "Are you fine?"  
10 He said, "Yeah, I'm fine."

11 Q. Okay. Did he communicate anything else to you during  
12 that clip?

13 A. No.

14 Q. Okay.

15 THE COURT: Just for the record, because this  
16 isn't going to show up in the transcript, you're making a  
17 sign that involves raising your hand and putting your  
18 thumb toward your torso. And that means "fine" in  
19 American Sign Language?

20 THE WITNESS: I think so. That's what I've been  
21 using.

22 THE COURT: Okay. It means "fine" to Mr. Reina?

23 MR. HARLAN: And, Judge, I'm sure you will be  
24 happy about what I'm about to say. I just have one final  
25 thing.

1 THE COURT: I would be happy if I believed you.

2 MR. HARLAN: So just another piece of the clip,  
3 Tracy, if you could go to one hour, 23 minutes, 34  
4 seconds. It's during the paper route.

5 THE WITNESS: Oscar for the cheer.

6 (Video played.)

7 BY MR. HARLAN:

8 Q. Now, before we play the clip, Ms. Polizzi, so this is  
9 a video that was filmed at the EEOC's direction in  
10 connection with this case, correct?

11 A. Correct.

12 Q. And by the time this video was taken, you had already  
13 had your deposition taken, correct?

14 A. I don't remember, to be exact. I don't know.

15 Q. At the time that the video was taken and you appeared  
16 in it, you certainly understood what the case was about?

17 A. Sure.

18 Q. And you understood that part of the case, from  
19 Mr. Reina and the EEOC's perspective, was showing that  
20 Mr. Reina was able to do things himself, correct?

21 A. To show what Paul is capable of.

22 Q. And that he could do job functions himself?

23 A. Correct.

24 MR. HARLAN: Okay. Tracy, can you play that  
25 part?

1 (Video played.)

2 BY MR. HARLAN:

3 Q. Stop it right there I mean, Tracy.

4 So you would agree with me in that clip that we just  
5 presented, despite knowing that the case was about showing  
6 Mr. Reina's ability to do job functions himself, even in  
7 this new position you're helping him do the work in order  
8 to deliver those papers, right?

9 A. If I could explain that in context.

10 Q. Could you answer the question first though?

11 A. Sure. Yes.

12 Q. Okay. Go ahead.

13 A. When I needed to show him something new, I would show  
14 him how to do something new, which is putting a sticker on  
15 the paper. They only did that like twice a year, so that  
16 was a new thing that day. Normally the papers don't have  
17 a sticker and he could just fold them.

18 Q. And am I correct that if the video were to play  
19 longer, it would show you taking the papers that had been  
20 folded up and putting it in a delivery bag to go out on a  
21 route?

22 A. Occasionally I did that so we could get going faster.  
23 When Paul needed -- when we had to be quicker,  
24 occasionally I would have to help Paul.

25 MS. VANCE: Ms. Polizzi, thank you, very much.



1 THE COURT: How long do you think your redirect  
2 will be?

3 MS. VANCE: Less than five minutes.

4 THE COURT: All right. Very good. So we'll take  
5 our afternoon break after we do the redirect.

6 REDIRECT EXAMINATION

7 BY MS. VANCE:

8 Q. Ms. Polizzi, you were asked about the occasions when  
9 you observed, in your capacity as a firefighter, the  
10 occasions when you observed Paul at work when Matt  
11 Coppernoll, his primary job coach, was using the cart  
12 caddy. And I just want to know, on those occasions did  
13 you have the opportunity to observe the entire process or  
14 just the trip?

15 A. No. All I saw was one small piece of what he was  
16 doing out of context. I didn't know what Matt was doing  
17 with him.

18 Q. All right. Now, I want to know, did anyone ever tell  
19 you that it was inappropriate -- anyone at Walmart tell  
20 you that it was inappropriate to push carts alongside  
21 Paul?

22 A. No.

23 Q. If Walmart had said, Ms. Polizzi, we don't want job  
24 coach pushing carts with Paul, we want Paul performing the  
25 job, what would you have done?

1 A. We would have trained Paul to do it himself.

2 Q. Were you ever told you should be using the electric  
3 cart caddy?

4 A. No. I felt that the cart caddy was a convenience for  
5 the other cart pushers. And we actually wanted Paul to do  
6 the work, so we made him work. We felt that that was good  
7 for him. And we thought that Walmart wouldn't care as  
8 long as the job got done. I didn't realize it was such a  
9 big deal to them or we would have changed it. We could  
10 have made that change easily probably.

11 Q. Now, Attorney Harlan had asked you about what  
12 customer service training you had from Walmart. And I  
13 recall your testimony was "I didn't." And so I'll ask if  
14 Walmart had asked you to attend the new-hire orientation  
15 to learn how to provide customer service in the Walmart  
16 way, what would you have done?

17 A. I would have gone.

18 Q. We saw the video clip of the cart attendant who was  
19 manually pushing a train, a line, of several carts. And I  
20 think it's fair to say Attorney Harlan expressed some  
21 skepticism about your testimony of steering a line of  
22 carts with one finger. And I just want to ask you, how  
23 often would you estimate that that's what you did is steer  
24 carts with one finger?

25 A. All the time.

1 Q. More than ten times?

2 A. Yes.

3 Q. More than ten times per day?

4 A. Sure, because we were, for three and-a-half hours, we  
5 were out in the parking lot the entire time most days.

6 Q. And then turning your attention back to the clip we  
7 saw of you communicating to Paul. And I believe you  
8 testified he gave you the sign for "fine." Can you show  
9 us, help the jury kind understand, how Paul answers a  
10 "yes" or a "no" question?

11 A. This would be "yes" and that would be "no." He does  
12 "no" very well, but "yes" is kind of fleeting.

13 Q. When you showing me that, I see that up there.

14 A. Yes.

15 Q. Does Paul answer a "yes" or "no" question?

16 A. No.

17 Q. What does he do?

18 A. He doesn't make an out big gesture. He just does it  
19 low. He does everything like in the center of his chest,  
20 all of the signing. Occasionally he'll be out here, but  
21 most of the time it's right directly in front of him and  
22 low. Most people will sign up and away so others can see  
23 it. Paul kind of signs back to you just in his mid area.

24 MS. VANCE: Thank you. No further questions at  
25 this time.

1 THE COURT: Thank you, Mr. Polizzi. Now we'll  
2 take our afternoon break. We'll reconvene at 4:15 and at  
3 that point we'll hear the next witness.

4 (Jury out at 3:58 p.m.)

5 THE COURT: Who will your next witness be?

6 MS. VANCE: Matthew Coppernoll, the primary job  
7 coach. Between now and then, Your Honor, we did want to  
8 show our 12 minutes of the *Day in the Life* video.

9 THE COURT: Okay.

10 MS. VASICHEK: And following that we will do the  
11 performance evaluations, a selected number of them.

12 THE COURT: So before we call Mr. Coppernoll, you  
13 say?

14 MS. VANCE: Yes.

15 THE COURT: Okay. So when we come back, we're  
16 going to see the video and then we're going to talk about  
17 some of the --

18 MS. VASICHEK: Performance evaluations.

19 THE COURT: -- performance evaluations. Okay.

20 MR. HARLAN: I didn't get a chance to ask any  
21 follow-ups to her questions. I ran out my clock, huh?

22 THE COURT: Not if you don't ask. All right.  
23 We'll see you in 15 minutes.

24 MR. HARLAN: Thank you.

25 (Recess at 4 p.m. until 4:15 p.m.)

1 THE COURT: All right. Sit down for just a  
2 second. I want to clarify a couple of things. First of  
3 all, on the question of the recross, normal procedure here  
4 is you get a direct, cross, and a redirect. And unless  
5 something surprising comes up in the redirect, you've had  
6 your chance on cross-examination. But if something does  
7 come up, then ask. But the default is going to be direct,  
8 cross, redirect, and we're done.

9 MR. HARLAN: Your Honor, it was a poor attempt  
10 to --

11 THE COURT: All right. Just so you know. So  
12 occasionally I will do it if something new comes up in  
13 redirect. The redirect should only be responsive to the  
14 cross anyway, so it should be rare.

15 Then on the next things we're going to see, so we're  
16 going to come back. Before we see the next witness, we're  
17 going to watch the video. That's fine. We've already  
18 worked that out. Do you need me to introduce the video at  
19 all? You're just going to tell us what the video is?

20 MS. VANCE: Your Honor, we had simply intended to  
21 move for the admission of Exhibit 59, the video, into  
22 evidence.

23 THE COURT: Obviously I'll receive it. So  
24 there's no need to --

25 MS. VASICHEK: No need to do that.

1 THE COURT: We'll just it's Exhibit 59, that will  
2 be in, and then we should just tell the jury what it is.

3 MS. VANCE: All right.

4 THE COURT: So you're willing to do that. Great.  
5 Then we have the 17 performance evaluations.

6 MS. VASICHEK: Yes. We've pared it down, Your  
7 Honor. We'll be moving in the performance evaluations --  
8 Exhibit 63, 64 and 66, but we'll only be showing -- and I  
9 can tell you which ones we're showing, if defendants want,  
10 in advance.

11 THE COURT: So Exhibit 63, 64 and 66?

12 MS. VASICHEK: And 1 through 18.

13 THE COURT: Okay. And 1 through 18. And what  
14 are 63, 64 and 66?

15 MS. VASICHEK: 63, it's a *Pre-Screening*  
16 *Questionnaire* from his personnel file.

17 THE COURT: Okay.

18 MS. VASICHEK: 64 is the 1999 *Reasonable*  
19 *Accommodation* form that both of us referred to in opening.  
20 And 66 is an early performance evaluation.

21 THE COURT: Okay.

22 MS. VASICHEK: And the ones I will actually be  
23 asking permission to highlight portions of will be 18 and  
24 64 -- 64 simply the signature --

25 THE COURT: Okay.

1 MS. VASICHEK: -- 66, 11, 13, 14, 16 and 17, and  
2 I will go quickly.

3 THE COURT: Okay. So what I will tell the --  
4 first of all, I've already ruled on the performance  
5 evaluations --

6 MS. VASICHEK: Right.

7 THE COURT: -- so those will be admitted. Then  
8 the other documents -- 63, 64, 66 -- I gather both sides  
9 are going to use them.

10 MR. HARLAN: Yes. No objection.

11 THE COURT: No objections on those, so those will  
12 be admitted. So 63, 64, 66 are in. Exhibits 1 through 18  
13 are in. And so I'll just tell the jury that I've already  
14 ruled these documents are admissible, they'll have them  
15 during deliberations, but you will briefly highlight some  
16 aspects of these documents, so you can just highlight them  
17 and show them.

18 MR. HARLAN: Your Honor --

19 THE COURT: Go ahead.

20 MR. HARLAN: -- so two questions. How are we  
21 handling our clip?

22 Are you going to play our clip?

23 MS. VANCE: So what we have is our 12-minute  
24 portion of the *Day in the Life*. And then, as we emailed,  
25 we weren't sure if you wanted us to just say "And now

1 defendant is playing some counter-designations"? "Now  
2 I'll play three minutes of counter-designations"?

3 THE COURT: It's just all in there as one group?

4 MS. VANCE: We kept it as two separate files, not  
5 knowing how the presentation should be. It's repetitive  
6 of some of the --

7 MR. HARLAN: Carrie, are you going to just play  
8 it?

9 MS. VANCE: Yeah.

10 MR. HARLAN: Yeah, that's fine. We don't have a  
11 problem with it.

12 THE COURT: So we've got 12 minutes, then we've  
13 got three minutes, but that's redundant with certain  
14 portions of the 12 minutes.

15 MS. VASICHEK: Not -- not -- I mean, there are  
16 differences.

17 THE COURT: Minor overlap.

18 MR. BULIOX: Yeah, minor overlap.

19 THE COURT: Okay. All right. We won't lose any  
20 sleep over that.

21 MR. HARLAN: If you could just identify it as  
22 ours. That's the only --

23 MS. VANCE: Yeah.

24 THE COURT: I'll take your input. Do you want me  
25 to say, "Okay. This is the parts" --



1 MR. HARLAN: That would be great, if you don't  
2 mind.

3 THE COURT: Okay. All right. So I'll introduce  
4 it that way then.

5 MR. HARLAN: Your Honor, one other question. The  
6 stipulation we worked out in terms of Mr. Reina not  
7 testifying, you were going to tell the jury about that.

8 THE COURT: Yes.

9 MR. HARLAN: When do you contemplate doing that?

10 THE COURT: I'll take your input. Should we do  
11 it now?

12 MS. VASICHEK: Or at the time when the video  
13 deposition comes in, the clips from the deposition,  
14 because what it relates to and it seems to me that would  
15 make more sense.

16 THE COURT: Please remind me though so I don't  
17 forget.

18 MS. VASICHEK: I'm sure Mr. Harlan will.

19 MR. HARLAN: Okay.

20 THE COURT: Very good. Let's bring the jury  
21 back.

22 (Jury in at 4:25 p.m.)

23 THE COURT: All right. Welcome back. Before we  
24 hear from our next live witness, we've got some evidence  
25 that we're going to present to you in another way, partly

1 for efficiency sake and partly because of the nature of  
2 the evidence. So we're going to see some video and then  
3 we're going to look at some documents that the parties  
4 have stipulated can be admitted.

5 And so the first thing we're going to have is a  
6 video. And the first chunk of this video is going to be  
7 selections of the video. Well, I'll let you introduce it.  
8 The plaintiffs would like to show you some video and  
9 they're going to tell you what it is.

10 MS. VANCE: Thank you, Your Honor. At this time  
11 the plaintiff moves Exhibit 59, the *Day in the Life of*  
12 *Paul Reina* video, into evidence to be admitted into  
13 evidence.

14 THE COURT: We've already covered all that, so  
15 the evidence is already in.

16 MS. VANCE: Thank you.

17 THE COURT: So you can just tell what it is and  
18 then we'll play it.

19 MS. VANCE: Yes. Members of the jury, the EEOC  
20 arranged for a day in Paul Reina's life to be videoed for  
21 the purposes of letting you see Mr. Reina kind of go  
22 through his day. And this is going to be a 12-minute  
23 video summarizing a day in Paul's life with a camera  
24 following him throughout the day.

25 THE COURT: Very good. Let's have a look at it.

1 (Video played at 4:27 p.m.)

2 MS. VANCE: Can we have volume, please?

3 MS. VASICHEK: I'm sorry, Your Honor. We're  
4 having some technical difficulties.

5 MS. VANCE: This problem, Your Honor, this  
6 problem this morning with the system, was solved by a  
7 reboot. Could we take three minutes?

8 THE COURT: I'll have to get somebody over to  
9 restart the system.

10 MR. HARLAN: Do you want us to play our version,  
11 Your Honor?

12 THE COURT: Do you have the same file?

13 MR. HARLAN: Yes, sir.

14 THE COURT: We'll see if the other side works.

15 MS. VANCE: Oh. Thank you.

16 MR. HARLAN: Okay. Sorry. We actually don't  
17 have it.

18 MS. VANCE: I think the record should actually  
19 reflect that I think the film was sped up a little bit  
20 in --

21 THE COURT: I think that's just -- because the  
22 audio was fine, so I think it was just the frame rate. I  
23 mean, it looks a little faster, but it's playing at the  
24 right speed, or the sound would be off. We'll have some  
25 help here in a moment.

1           We're having trouble playing the video. The  
2 suggestion was rebooting took care of the situation this  
3 morning.

4           THE CLERK: Rebooting the laptop?

5           MS. VANCE: Rebooting the laptop.

6           THE COURT: Okay.

7           MS. VANCE: And then we would ask to play from  
8 the beginning.

9           THE COURT: Go ahead.

10          MS. VANCE: Thank you.

11          MR. HARLAN: I think we actually do have it, Your  
12 Honor.

13          THE COURT: How far are we from completing the  
14 reboot on the laptop? Are we rebooting our system now?

15          THE CLERK: We are not.

16          THE COURT: Well, it's just I've lost my screen.

17          MR. BULIOX: All right. Your Honor, we have it.

18          MS. TOMPKINS: But now the system is --

19          THE COURT: Just give it a second here.

20          (Discussion held off the record.)

21          THE COURT: Is it ready? All right.

22          MR. HARLAN: We have no objection if they want to  
23 start from the beginning.

24          THE COURT: It sounds like we have audio, but I  
25 don't see any video.

1 MS. VASICHEK: The video is playing on the  
2 laptop, but it's not coming up on the display.

3 THE COURT: There we go.

4 (Video played at 4:35 p.m. until 4:50 p.m.)

5 MS. VANCE: Next, what you will be seeing are  
6 three minutes that the defendant has designated to show  
7 you from the raw footage of that video.

8 (Video played at 4:50 p.m. until 4:53 p.m.)

9 THE COURT: All right. Next I believe we're  
10 going to see some documents that I've already ruled have  
11 been admitted. And so for efficiency sake, counsel will  
12 describe the documents to you, show you some reflections  
13 of them. Either side can make reference to the documents  
14 in their closing arguments and you will have all of them  
15 with you when you go to deliberate. So with that, let's  
16 look at the documents.

17 MS. VASICHEK: This is selected documents from  
18 the personnel file and the performance reviews. We will  
19 start with what is marked as Exhibit 18. Exhibit 18 is  
20 the *Reasonable Accommodation Reimbursement* for Paul Reina  
21 for the cart pusher job in January 26th, 1999. This is  
22 the form that says that under that, under *Essential*  
23 *Functions*, he's unable to work in the parking lot without  
24 assistance. And then below that, in the next section, it  
25 says, "Will allow aide to work with Paul."

1           Next we're going to go to Exhibit 64. 64 is the same  
2 form. But if you focus at the bottom of it, you will see  
3 the signature of the store manager, Brian West, of January  
4 26th, 1999.

5           Next, a select of documents of the performance  
6 evaluation, we go to Exhibit 66, which is a document from  
7 2000, February 2000. And it states, "This form is to be  
8 used to recognize any action for which the associate  
9 should become commended." It states underneath that,  
10 "Paul gives his best effort in every task that is  
11 assigned."

12           Going to Exhibit 11, Exhibit 11 is an evaluation from  
13 2008. Focusing on the first page, "NA" has been written  
14 next to the following tasks: "Answers all customer service  
15 calls from other associates"; "Communicates with other  
16 stock/cart associates to ensure all calls are answered";  
17 "Helps customers find what they need"; "Assists in  
18 layaway"; "Provides customer carry-outs when needed";  
19 "Helps keep rest room, vestibule, and trash cans clean";  
20 "Helps keep fixture room organized"; "Is knowledgeable  
21 about emergency procedures"; "Follows equipment  
22 guidelines"; "Properly uses ladders"; and "Makes bales in  
23 a timely manner."

24           On the last page of this document, under *Strengths*,  
25 you will see it states that "Does a good job keeping carts

1 filled inside the building. Works well with other cart  
2 pushers. Does anything asked from the CSMs."

3 Next we're going to look at Exhibit 13, which is a  
4 *Performance Evaluation* from 2010. Under *Strengths* it  
5 states, "Help where is needed. Friendly with customers.  
6 Works well with fellow associates."

7 14. 14 is a *Performance Evaluation* from 2011. Under  
8 *Strengths* -- under *Comments* it states, "Paul follows  
9 proper procedures when coming in from the lot" -- "when  
10 bringing carts in from the lot. He does a good job  
11 keeping the cart corral full consistently. He listens to  
12 his supervisors and follows directions well." Under  
13 *Strengths* it states, "Paul is courteous with the  
14 customers. He follows direction and continually gets  
15 carts in from the lot."

16 Turning to Exhibit 16, this is an evaluation from  
17 2013. Going to the page where it talks about *Strengths*,  
18 it states, "Paul does well with making sure carts are full  
19 in the bay. Paul is good at making sure there are no  
20 stray carts all over and makes sure all carts are cleaned  
21 up around the building."

22 And our final one that we will point out here is  
23 No. 17, which is from 2014. Under *Strengths* it states,  
24 "Paul is a pleasure to work with. Paul knows his  
25 expectations and does his job well. Paul gets along with

1 his fellow associates as well as is friendly with his  
2 customers. Paul's attendance is decent, having not missed  
3 any of his shifts, which shows his dedication to his job.  
4 Paul is good about making sure the carts are cleaned out  
5 of garbage."

6 "Development for Paul would be to communicate with  
7 management when he is taking his break and to watch his  
8 tardies. Paul also needs to be aware that when he is not  
9 using the cart caddy, only 10 carts can be pushed at a  
10 time."

11 That is all we'll point out at this point, Your  
12 Honor.

13 THE COURT: Very good. And let's get started  
14 with your next witness.

15 MS. VANCE: Plaintiff calls Matthew Coppernoll.  
16 Your Honor, while we're waiting, EEOC moves for admission  
17 of Exhibit 28.

18 THE COURT: What is Exhibit 28?

19 MS. VANCE: It is some certifications and  
20 trainings completed by Matthew Coppernoll.

21 MR. HARLAN: No objection, Your Honor.

22 THE COURT: Very good. It will be admitted.

23 MS. VANCE: Thank you.

24 THE COURT: Come on up here, Mr. Coppernoll. We  
25 will swear you in right behind the witness stand if you



1 come in around the back there.

2 THE WITNESS: Okay.

3 **MATTHEW COPPERNOLL, PLAINTIFF'S WITNESS, SWORN**

4 THE COURT: All right. Mr. Coppernoll, you don't  
5 need to lean into the microphone when you speak. But if  
6 you keep your chair so you are about one foot away from  
7 the microphone, we should be able to hear just fine.

8 THE WITNESS: About right here?

9 THE COURT: That would be fine. If you need to  
10 scoot around, I will tell you. Go ahead.

11 DIRECT EXAMINATION

12 BY MS. VANCE:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Would you please state your full name for the record?

16 A. Matthew A. Coppernoll.

17 Q. Mr. Coppernoll, where do you live?

18 A. In Beloit, Wisconsin.

19 Q. And currently do you work?

20 A. No.

21 Q. Are you retired, sir?

22 A. Semiretired because of my disability.

23 Q. How do you know Paul Reina?

24 A. He's been a family friend for about 35 years and I  
25 also work as his job coach.

MATTHEW COPPERNOLL - DIRECT

1 Q. And did you know the family of Paul Reina before you  
2 met Paul himself?

3 A. Yes.

4 Q. How long have you known Paul Reina's foster family?

5 A. Probably since 1975.

6 Q. Mr. Coppernoll, can you give us an idea of your work  
7 background, your professional background?

8 A. I have worked as a job coach, a personal care worker  
9 with a number of -- a couple of residential programs in  
10 the Beloit and Janesville area. I've worked as a night  
11 services supervisor at Rock Valley Community Programs,  
12 which is a halfway house. I've worked at Geneva Lakes  
13 Kennel Club Greyhound Racetrack as program sales and  
14 customer service. I worked as a district manager for the  
15 *Beloit Daily News* and *Janesville Gazette*.

16 Q. And I'd like to ask you, before you started working  
17 as an aide with Paul Reina, had you worked with people who  
18 had disabilities?

19 A. Yes.

20 Q. Can you tell us some of those jobs, please?

21 A. Personal care worker, I worked basically doing the  
22 personnel care duties: helping them prepare for work in  
23 the mornings, assisting with their meal preparations,  
24 cleaning, hygiene, transportation, and appointments.

25 Q. All right. And I'd like to have us look at what's

1 been admitted into evidence as Plaintiff Exhibit 28. Now,  
2 and we'll just kind of scroll through so that we can get a  
3 sense of how many pages -- the contents of Exhibit 28.  
4 And if we could go back to the first page.

5 So, Mr. Coppernoll, do you recognize these pages?

6 A. Yes, I do.

7 Q. And what are they, please?

8 A. They're certificates that I've received in the course  
9 of training at various programs and seminars that I've  
10 undertaken.

11 Q. Are all these certificates or recognitions in Exhibit  
12 28 from work experiences prior to your employment with  
13 Mr. Reina?

14 A. Yes.

15 Q. Okay. And I want to ask you, let's look at this  
16 first page, *Keys to Preventing Workplace Violence*. And  
17 the next one is *Conflict Management and Confrontation*  
18 *Skills*. Were those courses you took for your job?

19 A. Yes.

20 Q. Were there any skills that you learned in these  
21 courses that affected the way you worked with Mr. Reina?

22 A. I mean, I think all of the classes that I took, in  
23 one way or another, affected many parts of my life. These  
24 classes might have -- I mean, they help me identify  
25 problem areas that could escalate and how to avoid them.

1 Q. All right. And let's scroll to a few pages into  
2 *Challenging Behaviors*. In 2002 you took -- you completed  
3 the requirements for a *Challenging Behaviors* course. Can  
4 you recall some of the things you learned in this course?

5 A. Yeah. Some of the things were to identify --  
6 identify how people might escalate, depending on their  
7 mood or problems that they have, and how to de-escalate or  
8 avoid escalating problems.

9 Q. And on the next page I see -- I should look here --  
10 *Certificate of Completion*. Can we zoom in on this maybe,  
11 *Certificate of Completion*? And see under your name, "For  
12 successful completion of the Dungarvin Wisconsin 40-hour  
13 Personal Care Worker Training Course" -- yeah, "40-hour  
14 Personal Care Worker Training Course"? Can you describe  
15 for us the kind of duties that the Personal Care Worker  
16 Training Course prepared you for?

17 A. Yeah. This training program was required to be  
18 completed before you would be allowed to work with a  
19 person in our program on an individual basis, otherwise  
20 you would have to have another staff member with you at  
21 all times. These would be situations and the proper  
22 administration of medications, and especially that was a  
23 big one. Resident rights, resident are certain rights  
24 that you have to follow and respect. Abuse and neglect, I  
25 mean, that kind of goes along with everything. As

1 mandatory reporters, we had to be able to identify what  
2 abuse was and what neglect was and the steps that would be  
3 taken if you observed that.

4 Q. Can I interrupt you for a second and ask you to give  
5 us a little more context about the population you're  
6 learning to be a personal care worker for --

7 A. Right.

8 Q. -- training?

9 A. This would be developmentally disabled individuals  
10 and they would be various types of disabilities from  
11 learning impaired, visually and hearing impaired. Some  
12 had autism and others had, besides their developmental  
13 disabled disabilities, they might have physical  
14 disabilities as well.

15 Q. Thank you. I'll ask Mandie to show the next two  
16 pages. We'll go bang bang.

17 You have a certificate in a *Caregiver Course*. This  
18 was three hours. And, let's see, the next page is an  
19 eight-hour course. Can you describe what skills that or,  
20 if any, of the skills there prepared you for work with  
21 Paul Reina?

22 A. Well, this class was primarily in the area of  
23 community-based residential facilities. So many of these  
24 things would not apply directly to Paul. But in the  
25 aggregate, you can see that things that you learned in

1 this area would apply to other areas as well.

2 Q. Okay. And could you describe for us, just to give us  
3 some background, how did you first come to work with Paul  
4 Reina at Walmart?

5 A. Well, as I remember, it seems like I was down  
6 visiting Rose one day and I think her sister Margie was  
7 there. And they were looking for a replacement for the  
8 fellow that was -- that had been working with Paul but was  
9 leaving.

10 And I think I kind of asked them about it, what was  
11 it about. And I think Margie said, "I don't know why we  
12 never considered Matt for it." So then I found out a  
13 little bit more about it and gave it a try, really liked  
14 working with Paul.

15 Q. And can you kind of walk us through the process for  
16 getting the job?

17 A. Well, when we found I was interested in it, Rose  
18 asked me some questions about it and told me a little bit  
19 about what the job was and asked me if I would like to  
20 shadow the fellow that had been working with him. I can't  
21 remember his name. But I went to work with him, saw what  
22 he and Paul did and decided that I would like to do that  
23 with Paul.

24 Q. Now, when you did start recording hours, how were  
25 your hours paid?

1 A. How were they paid? I turned in a time sheet to, I  
2 believe it was, Arc. Well, I gave it to Rose and she  
3 would typically send it into Arc, back to them. And the  
4 State of Illinois would send us -- send me a check for the  
5 hours worked.

6 Q. And was there any kind of a screening process  
7 through -- in the hiring process?

8 A. Yeah. I believe I had to go through a background  
9 check. But that was so long ago, I don't really remember  
10 a great deal about it.

11 THE COURT: Actually, maybe this would be good  
12 time to put a timeline on it, if you would. When was this  
13 that you started working with Paul?

14 THE WITNESS: I believe it was in like 2005,  
15 during that time frame.

16 THE COURT: Thank you.

17 BY MS. VANCE:

18 Q. And so to give some more context to that, it sounds  
19 like Paul had been performing the job for over six years  
20 at that point. Does that sound right to you?

21 A. Correct. I think he got that job just after he had  
22 finished high school or shortly before he finished high  
23 school.

24 Q. And then if you started in 2005, what is the year  
25 that you stopped working at Walmart with Paul?

1 A. That would have been about the time he was no longer  
2 employed there. That would have been 2015.

3 Q. So you had about ten years?

4 A. Right.

5 Q. Okay. And can you give us a sense of how you  
6 communicated with Paul?

7 A. Well, basically sign language and facial expressions  
8 was the main way.

9 Q. Would you gesture with Paul?

10 A. Yes.

11 Q. And how would you understand what he was  
12 communicating to you?

13 A. Just by observing his facial expressions or, if he  
14 didn't want to do something he would -- and he was adamant  
15 about it, he would sign "no." If he wanted to do  
16 something that I asked him to do, he would either do it or  
17 he would say "yes."

18 Q. And how did you learn -- how did you learn these  
19 methods and learn to communicate with Mr. Reina?

20 A. Just, I don't know, being with him and with his  
21 previous worker I learned some. I learned some, you know,  
22 from Rose and Margie.

23 Q. Did you work as Paul's personal aide and have your  
24 hours paid in settings other than being his job coach in  
25 the cart pusher job at Walmart?



1 A. Yes. I assisted him with a little job, I guess you  
2 would call it, making bird houses. He would build the  
3 bird houses; paint them; and sell them to friends,  
4 neighbors, family members, things like that.

5 Q. Now, was that in a home setting?

6 A. Yes. We would typically do it over at his aunt's  
7 house.

8 Q. And as far as the job aide at Walmart, tell us --  
9 that involved more than just -- tell us, when you would  
10 start your day, would you go to Paul's house?

11 A. Yes. I would leave my home and drive over, pick up  
12 Paul and, you know, make sure he was dressed appropriate  
13 for the weather. And we would leave his home and he  
14 would -- I would drive to Walmart. As we would go into  
15 Walmart, entering the parking lot, we would look around,  
16 observe the condition of the lot and park my vehicle.

17 And we would go inside. Paul would clock in. And we  
18 would go back out into the parking lot and start gathering  
19 up carts and bringing them to the bay doors where they  
20 would come into the building.

21 Q. And then did part of your work also involve later  
22 bringing Paul home?

23 A. Right.

24 Q. How would you -- so then I will direct your attention  
25 to kind of the job performance and we'll start asking you

1 to give us some details there. Would you describe how  
2 Paul Reina performed the cart attendant job when you were  
3 his job coach?

4 MR. HARLAN: Objection, Your Honor. Vague as to  
5 time. I don't know what time frame we're talking about,  
6 the whole period or --

7 THE COURT: Did it change much over the course of  
8 the ten years you worked with him?

9 THE WITNESS: Not really. I mean, there were  
10 variations. For a period of time Paul did not have --  
11 well, Walmart did not have a cart caddy for Paul to  
12 utilize. But basically the job pretty much stayed the  
13 same.

14 THE COURT: All right. I'll overrule the  
15 objection, but if you would clarify if there were any  
16 changes during the course of his employment.

17 MS. VANCE: Thank you.

18 BY MS. VANCE:

19 Q. Mr. Coppernoll, I'll direct your attention to when  
20 you first began in the 2005 time frame working with Paul.  
21 Describe, before there was a change, like the introduction  
22 of a cart caddy, describe, please, how Paul -- how  
23 Mr. Reina performed the cart attendant job when you were  
24 his job coach in that time frame.

25 A. Okay. We would go out into the lot together and Paul

1 would gather -- we would walk down -- walk out in the  
2 parking lot and Paul would gather up the carts.

3 Sometimes there were what we call "stray carts."  
4 Those were carts that were not in the designated cart  
5 corral where you typically return your cart after  
6 shopping. We would gather up those and kind of nest them  
7 together, stack them together.

8 And then we would move down to where the cart corral  
9 was where most of the carts were contained. And Paul  
10 would stack together approximately 10 or 12 carts and then  
11 we would push them up to the bay doors.

12 Q. So I'll ask you to give us a little more detail.  
13 You're saying "we." Are there -- sometimes you're saying  
14 "we" and sometimes you're saying "Paul." Can you tell us,  
15 did you kind of have defined parts of the job that Paul  
16 did?

17 A. Paul would gather the carts and I would hold like one  
18 of the carts. If it was facing downhill, I would hold the  
19 front cart so that it wouldn't roll down. If it was  
20 facing uphill, I might hold the rear of the carts so that  
21 it wouldn't slide back down the hill.

22 Walmart parking lot is on kind of a slanted area  
23 where it's kind of uphill in some spots and downhill in  
24 others, and especially depending on the direction. So  
25 Paul would basically gather the parts and put them

1 together and I would hold them so they wouldn't roll.

2 Q. Then when it comes time to move a train or a line of  
3 carts that you gather or Paul gathered to the store, what  
4 would happen?

5 A. Paul would push the carts from the rear and I would  
6 steer them from the front.

7 Q. How did you understand your role in this process as  
8 job coach?

9 A. Well, I was Paul's eyes and ears. I was there to  
10 keep him on track and, you know, keep him so that he -- he  
11 couldn't see very well and so I would make sure that he  
12 wasn't steering -- you know, pushing the carts into an  
13 area where they shouldn't be.

14 Q. Now, would you describe interactions with customers  
15 that you and Mr. Reina had at Walmart?

16 MR. HARLAN: I'm going to object. Leading, Your  
17 Honor.

18 THE COURT: Overruled. Go ahead.

19 A. Interactions? I'm not sure not sure how to answer  
20 that.

21 Q. Well, let me ask, were customers in the parking lot  
22 returning to their cars usually?

23 A. Yes.

24 Q. Did you have interactions with customers returning  
25 purchases to their cars with Paul --

1 A. Oh, returning purchases, yes.

2 Q. -- or taking home -- leaving the store with their  
3 purchases?

4 A. Right. Paul did assist customers taking groceries  
5 out to their vehicle, unloading them from his -- from  
6 their cart into the customer's vehicle. He did do that.  
7 He would push the cart. I would kind of steer it unless  
8 the customer was pushing it. But then he would unload it  
9 and put the groceries in either the trunk or the door of  
10 the vehicle.

11 Q. How often would you estimate that Mr. Reina helped  
12 customers put their purchases into the trunk, as you just  
13 described?

14 A. It was rare, maybe a couple times a month.

15 Q. What interactions did you have with other cart  
16 attendants?

17 A. I would just maybe talk to them --

18 Q. Okay.

19 A. -- but that was about it.

20 Q. All right. And did Walmart ever give you any way to  
21 know if a customer needed assistance getting purchases out  
22 to their trunk?

23 A. Yes. One of the cashiers or the customer service  
24 manager would typically either motion to us or come over  
25 and ask Paul to take the cart and items out to the

1 vehicle.

2 Q. Were you ever asked by a Walmart manager to change  
3 anything about the way you and Mr. Reina were working?

4 A. I don't think so, no.

5 Q. Were you ever asked by a Walmart manager to change  
6 Paul's job performance in any way?

7 A. Not that I remember, no.

8 Q. If you had been asked by a Walmart manager to change  
9 something about the way you were working or the way Paul  
10 was working, what would you have done?

11 A. I would have changed it as long as it wasn't  
12 something that was, you know, improper. I mean, Paul  
13 would go beyond what was required many times to complete  
14 any task that was asked. I don't think Paul ever refused  
15 to do a job that he was asked to do.

16 Q. And are you saying in your personal experience, he  
17 never refused a job that you asked him to do?

18 A. He never -- right. Well, I would interpret what  
19 somebody else asked him to do. I would tell it -- tell  
20 Paul what they wanted done or what he should do. And I  
21 don't remember him ever denying doing a job.

22 Q. Can you give us a specific example of something  
23 you're thinking of?

24 A. I mean, for instance, like picking up trash in the  
25 parking lot and bringing it back to the dumpster or the

1 recycler or the cardboard bundler, things like that. He  
2 would -- no problem. He would do anything that he was  
3 asked to.

4 Q. Now, were you present for the meetings that were the  
5 performance reviews of Paul Reina?

6 A. For many of them, I think probably at least half a  
7 dozen, maybe more.

8 Q. We'll get into just a couple of them in detail, but  
9 first I want you to just, in general, let us know what  
10 feedback generally did you receive from Walmart managers  
11 in the performance reviews about Paul's job performance.

12 A. Paul's job performance reviews were always good. I  
13 mean, he always received successfully completed each task  
14 that he was required to do. I think I only -- in the  
15 entire time that he had his reviews, I think I only saw an  
16 item mentioned his attendance on one progress report.  
17 Other than that, he had completely I think marvelous input  
18 from his supervisors.

19 Q. I'll ask for what's been admitted into evidence as  
20 Plaintiff's Exhibit 9. This is a 2006 evaluation, so this  
21 would be the first evaluation meeting that you had. Does  
22 that sound right to you, Mr. Coppernoll?

23 A. Yes, I think so.

24 Q. And if we're looking down this column, I see for the  
25 *Meets Expectations*, every check is in the *Meets*

1    *Expectations* column, right?

2    A.     Correct.

3    Q.     And I'll ask to scroll down to "Attendance and  
4    punctuality." I see how many days absent this year. Do  
5    you see the zero?

6    A.     Zero.

7    Q.     Okay. Do you see how many days tardy this year?

8    A.     Zero.

9    Q.     Now, I want to ask about I see some "NAs" in this  
10   third section. Can we blow that up, please?

11         "Helps keep restroom, vestibule, and trash cans  
12   clean," "NA." Mr. Coppernoll, do you know what that  
13   means?

14   A.     I don't, because when he needs to, he did pull the  
15   trash cans. But as far as keeping the rest room clean and  
16   I'm not sure what "vestibule" is.

17   Q.     And then if we -- the next "NA" is next to "Helps  
18   keep fixture room organized." Was Mr. Reina ever asked to  
19   keep the fixture room organized?

20   A.     No. I don't even know what that is.

21   Q.     And we'll scroll down to "Properly uses all ladders."  
22   Did you -- did Mr. Reina ever use a ladder?

23   A.     Never.

24   Q.     Were you ever asked to use a ladder?

25   A.     No.



1 Q. Okay. And when we turn the page and look at  
2 *Strengths*, I see "Paul is a good worker. He consistently  
3 stays productive and keeps up on adequate supply of  
4 carts."

5 And then under for *Areas For Improvement*, "Look for  
6 carts throughout the store as well as outside. Empty  
7 carts with trash and maintain a clean outside appearance."

8 Now, following this performance review, this first  
9 one that you had, did Paul pick up trash in the lot?

10 A. Yes.

11 Q. Did he do anything to maintain a clean outside  
12 appearance?

13 A. I'm assuming they mean outside the building. Yeah, I  
14 mean, picking up the trash I think is probably the main  
15 thing where he contributed in that area.

16 Q. All right. And when we scroll up we see the main  
17 general rating for this performance is *Meets Expectations*,  
18 right --

19 A. Yeah.

20 Q. -- that's what's indicated?

21 A. Right.

22 Q. All right. And I'd like to go now to 10.

23 THE COURT: Before you move on, we're right at  
24 5:30 now, 5:31 in fact. So how much longer do you have on  
25 the performance evaluations?

1 MS. VANCE: I had two more, Your Honor, so that  
2 would be five minutes, but then I do have more.

3 THE COURT: Why don't we just call it a night  
4 here.

5 MS. VANCE: Yes, Your Honor.

6 THE COURT: Finish up this document and we'll  
7 pick up with the rest of the performance evaluations in  
8 the morning.

9 So with that, we'll excuse you. Remember not to talk  
10 about the case or do any research. And we will see you at  
11 nine o'clock tomorrow morning.

12 (Jury out at 5:32 p.m.)

13 THE COURT: Thank you, Mr. Coppernoll. You can  
14 step down. Is there anything that we need to address  
15 either tonight or tomorrow morning before we begin trial?

16 MS. VASICHEK: I anticipate there's going to be  
17 some objections to documents that the defendants may use  
18 to cross-examine one of the witnesses.

19 THE COURT: Okay.

20 MS. VASICHEK: And Ms. Vance is going to handle  
21 that.

22 THE COURT: Okay. Should we try to address it  
23 right now or should we do it tomorrow morning?

24 MR. HARLAN: What are you referring to?

25 MS. VASICHEK: The medical records, some of the

1 Arc records, risk assessments, those forms. We're going  
2 to be calling Matt Matheny tomorrow.

3 MR. HARLAN: Okay. Yeah. They're business  
4 records and they've been certified. I mean, our position  
5 is we ought to be able to use them. First of all, I think  
6 in his deposition he certified the records as business  
7 records. And then we have a --

8 THE COURT: Move a little closer.

9 MR. HARLAN: I'm sorry, Your Honor. I don't know  
10 what the basis of the objection is. I mean, I think they  
11 are admissible business records.

12 THE COURT: Why don't you tell me what the  
13 exhibits are that we're dealing with here.

14 MS. VANCE: Your Honor, I'll direct your  
15 attention to Docket 134 for plaintiff's objections. And  
16 the -- starting with -- and then we also did update our  
17 objections and I don't have that docket number offhand.

18 THE COURT: Okay. So these are --

19 MS. VANCE: 572 -- 572 through 577, we expect  
20 that the defendant -- that Walmart would seek to be using  
21 these on cross. And we have, you know, objections on  
22 relevance and prejudice. Some of these documents are  
23 remote in time and they are not probative of job  
24 performance at Walmart. They're psychological evaluations  
25 and home assessments that also contain prejudicial

1 information.

2 THE COURT: All right. And so 572 through 577,  
3 so these are -- it looks like 572 through 574 are all  
4 Medicaid disability determinations. Is that right?

5 MS. VANCE: They're redeterminations for  
6 eligibility for the Medicaid Waiver, yes.

7 THE COURT: Okay.

8 MS. VANCE: And that is the funding stream for  
9 the job coaches. You know, the types of concerns we have  
10 are, you know, some of the tools that are required by the  
11 state for determining reeligibility are really kind of  
12 blunt instruments that have computer-generated scores.  
13 And if your score is enough, you qualify for  
14 recertification -- for eligibility, you know, continued  
15 eligibility.

16 THE COURT: Sure.

17 MS. VANCE: And I think that they're not going to  
18 be probative of job performance at Walmart.

19 THE COURT: All right. So I'm looking at 572,  
20 okay, and so it has the assessment here that is -- there's  
21 some scores for tests from some assessment tool, I assume,  
22 that I don't know if they're going to be explained. But  
23 then there is basically what falls under the heading of  
24 *Diagnosis and Severe Mental Retardation, Autism, Hearing*  
25 *Impaired, Vision Impaired.* And so is that the gist of

1 the -- well, then there's the summary documentation.

2 MS. VANCE: Right. "Paul functions similar to an  
3 individual 2 years 3 months of age," that's an estimate  
4 that's spit out by a test, you know, that the social  
5 worker takes and a computer generates this age  
6 equivalency. And I think it's prejudicial. It's not --

7 THE COURT: Okay. So when was this done? This  
8 one, and I'm just looking at 572, this is when?

9 MS. VANCE: This one, when we're talking about  
10 572, it's 2015.

11 THE COURT: Okay. Let's hear from Walmart. So  
12 what do you want to do with these documents?

13 MR. HARLAN: So we plan to -- Mr. Matheny, who  
14 was I think the representative who worked with the family,  
15 will testify as to some of these documents, that he  
16 personally was involved with them, and the observations.  
17 And certainly the one at 575 is one that he was involved  
18 in.

19 These are part of -- and we think there will also be  
20 testimony that basically indicates that Ms. Slaght was  
21 involved in this process. And this is part of the  
22 documentation being submitted on her and Mr. Reina's  
23 behalf to get benefits.

24 And so obviously his capability -- what he can do,  
25 what his functioning is -- is central to this case. The

1 records are certified. They're legitimate business  
2 records.

3 THE COURT: That's not the issue. That's not --

4 MR. HARLAN: Okay. That's really part of the  
5 challenge, too.

6 THE COURT: Well, it's really relevance is the  
7 gist of what was just presented to me, was that it's a  
8 relevance argument.

9 MR. HARLAN: So I think certainly his  
10 condition -- they have talked about his level of  
11 functioning, they've shown video purporting to show his  
12 level of functioning -- I think we ought to be able to  
13 challenge that with competing evidence, including evidence  
14 that the family was involved in submitting to the state  
15 for purposes of getting benefits. So they could obviously  
16 cross-examine the witness or get other witnesses to  
17 dispute it, including the guardian. I think --

18 THE COURT: And kind of give me the broader  
19 perspective about what Mr. Matheny -- is that how you  
20 pronounce it?

21 MS. VANCE: It's *Matheny*, Your Honor.

22 THE COURT: Mr. Matheny, what is the gist of his  
23 testimony going to be?

24 MS. VANCE: Your Honor, his job was service  
25 facilitator, so that he was to have periodic observations,

1 periodic reporting, on the use of the funds. So he, from  
2 time to time, observed the funds are, you know, paying the  
3 job coach. He did go to Walmart to observe, you know, to  
4 be able to report there's no abuse of funds, there's --  
5 you know, the use of Medicaid money is actually serving  
6 its purpose of expanding opportunity, expanding Paul's  
7 life into the community.

8 THE COURT: And so it involved some assessment of  
9 Mr. Reina's capacities and the risks that he poses, is  
10 that -- because there's a risk assessment sheet somewhere  
11 in the information, so that's part of the evaluation that  
12 he was doing?

13 MS. VANCE: That's part of the mandatory  
14 reporting to the state for use of the funds.

15 THE COURT: And so --

16 MS. VANCE: I mean, Your Honor, we have him also  
17 because he has an advocacy role. The evidence will show  
18 and my offer of proof is that he did attempt multiple  
19 times to reach out to Walmart to try to have the  
20 interactive --

21 THE COURT: I remember that part. So he's the  
22 person who tried to call and follow up and left messages  
23 but never got a call back. I got that part.

24 MS. VANCE: So we're going to be asking him about  
25 the, you know, the documentation, this kind of

1 documentation part of his job.

2 THE COURT: Here's the -- some of the assessments  
3 here may be less pertinent than our actually seeing  
4 Mr. Reina do certain tasks, like putting together the  
5 birdhouse with some success or delivering the papers,  
6 dealing with his medication. But it's sort of hard for me  
7 to say that these assessments of his capabilities are  
8 irrelevant when that's part of the assessment that I think  
9 we've got to make.

10 And part of the evidence that you've tried to present  
11 so far is that Mr. Reina is capable of doing certain  
12 things. And if we've got evidence that says he has  
13 certain limitations, I have a hard time seeing how I can  
14 say that's not relevant.

15 MS. VANCE: Well, I am concerned about the  
16 prejudicial effect of, you know, an ICAP score. I'm in  
17 576. "Paul Reina's living age equivalence is 3 years and  
18 0 months." You know, that's a score.

19 THE COURT: So where on that document is that?

20 MS. VANCE: Oh, I'm sorry. I'm on R-D-002057, is  
21 my Bate stamp.

22 THE COURT: 57 is the last of the Bate stamp.  
23 All right.

24 MS. VANCE: 2057. And in the middle section,  
25 *Personal Care/Daily Living*.



1 THE COURT: "Paul's Personal Living age  
2 equivalence age is 3 years and 0 months."

3 MS. VANCE: "Based on his current ICAP score."  
4 And the utility of an ICAP score is minimal. You know, it  
5 is kind of just a blunt instrument where you answer 20  
6 questions and then a computer -- 20 or so questions and  
7 then a computer spits out a score. I'm concerned that  
8 kind of information is prejudicial. It's not -- it's not  
9 a nuanced source of information about functioning.

10 THE COURT: Go ahead.

11 MR. HARLAN: Your Honor, these documents have  
12 been produced in discovery. They were covered in  
13 Mr. Matheny's deposition. This is not like a surprise.  
14 They knew the records that we were advancing. If they had  
15 concerns that the record --

16 THE COURT: They're not arguing that there's any  
17 sort of surprise.

18 MR. HARLAN: No, but what they're arguing --

19 THE COURT: They're just arguing that they're  
20 unfairly prejudicial.

21 MR. HARLAN: No, but they seem to be questioning  
22 the legitimacy of the reports, which goes to --

23 THE COURT: That goes to the unfair part.

24 MR. HARLAN: No, but I'm saying the way to meet  
25 that is they could have mounted their own evidence. They

1 could have gotten witnesses to undermine it.

2 Now, at the 11th hour, to come in and say, "Hey, the  
3 reports shouldn't come in because they're not reliable,"  
4 first of all, that's counsel's statement, so that's not  
5 evidence. That's her saying that.

6 We think the evidence is reliable. They've had  
7 notice of it. And they have certainly put Mr. Reina's  
8 capacity and functioning in evidence heavily, starting  
9 from the opening statement.

10 THE COURT: Mm-mm. I mean, I agree with you. I  
11 do think there are -- I question whether the ICAP score is  
12 really relevant. But at the same time, this is the kind  
13 of assessment that Mr. Matheny makes and apparently these  
14 are the tools that are provided to him.

15 I will say that my own reaction is I've seen the  
16 video. I haven't seen anything here that I think really  
17 makes it plausible that in some meaningful sense he's  
18 really the equivalent of a three-year-old. So I see that  
19 that is the score that he gets, but the jury has the  
20 fuller picture to evaluate whether this is worth any  
21 credence.

22 So I'm having a hard time finding that it's really  
23 not relevant. I think in the full context of your  
24 presentation, you can rebut it with cross-examination and  
25 say that the ICAP score just isn't really very telling

1 here. But to take this and say that it's really not  
2 relevant, when it's an assessment of his capacity, I'm  
3 having a hard time reaching that conclusion. And so I  
4 don't know if it's particularly telling, but I have a hard  
5 time saying that it's really unfair to have it before the  
6 jury.

7 And it seems to me that you're capable of explaining  
8 what the ICAP score. And if it's a blunt instrument,  
9 can't Mr. Matheny speak to that?

10 MS. VASICHEK: Yes.

11 THE COURT: So it seems to me that it's just  
12 fertile ground for cross-examination. I don't know that  
13 it gets Walmart a whole lot to point to that. I mean,  
14 that's the thing that you've highlighted is the unfairly  
15 prejudicial thing. I don't know that it's terribly  
16 compelling that it shows up on this form. But I have a  
17 hard time saying it's really not relevant. It's an  
18 assessment of his abilities that's done for the purpose of  
19 the benefits. I think you can put it in context.

20 So I don't know if there's anything else that you  
21 want me to look at, but basically these forms I think are  
22 admissible. I think the business records exception  
23 handles the *bona fides* of the report. But I'm still  
24 considering the prejudice that might come from it and I  
25 just don't think it's unfairly prejudicial. It's just an

1 assessment of Mr. Reina's abilities.

2 And it's a mixed bag. As I look through here, it  
3 describes some of the actual things that he does that are  
4 not consistent with being a three-year-old. So there is  
5 that sort of assessment and it does strike me as kind of a  
6 blunt assessment that's not terribly informative, but I'm  
7 not going to say that it's irrelevant.

8 MR. HARLAN: Can we move admission then at this  
9 time to save time?

10 THE COURT: I'm happy to do that. I don't know  
11 if there's any other ones that you want me to call out  
12 specifically.

13 MS. VANCE: Not on Mr. Matheny. However, we are  
14 also making a timely objection to the medical records that  
15 we believe would be under Dr. Deming, the family doctor.

16 THE COURT: And what exhibit numbers are those?  
17 So what we've just been talking about are 572 through 577,  
18 which I understand to be reports that Mr. Matheny used for  
19 the purpose evaluating the continuation of benefits for  
20 Mr. Reina.

21 And based on what I've seen, if you want to point me  
22 to anything else, I would find that these are appropriate  
23 to use. They would be admissible and appropriate to use  
24 in cross-examination of Mr. Matheny. So for efficiency  
25 purposes, Exhibits 572 through 577 will be admitted unless

1 there is some other one that you want to point me to.

2 MS. VANCE: All right. I think there will be  
3 further challenges. I think at this point it's better to  
4 wait until the -- closer to the time when we believe the  
5 defendant would be calling the witness.

6 THE COURT: Okay. All right. So I'll overrule  
7 the plaintiff's objection to 572 to 577 and those will be  
8 admitted and you can use them with Mr. Matheny. Okay.  
9 Anything else?

10 MS. VASICHEK: Not at this time, Your Honor.

11 THE COURT: Okay. Should we schedule 8:30 in  
12 case there is anything?

13 MS. VASICHEK: Sounds good.

14 MR. HARLAN: That's fine, Your Honor.

15 THE COURT: All right. So 8:30. I don't have  
16 anything specifically that we'll address, but I'll be  
17 available in case something comes up. And if we can be  
18 productive with some time before the jury comes back,  
19 we'll use it. So I'll just check in with you at 8:30. If  
20 there's nothing else, then I'll just go back upstairs and  
21 we'll reconvene at nine then. Okay. But we'll see you at  
22 8:30.

23 MS. VASICHEK: Thank you.

24 (Adjourned at 5:50 p.m.)

25 \*\*\*

1 I, CHERYL A. SEEMAN, Certified Realtime and Merit  
2 Reporter, in and for the State of Wisconsin, certify that  
3 the foregoing is a true and accurate record of the  
4 proceedings held on the 7th day of October, 2019, before  
5 the Honorable James D. Peterson, Chief Judge of the  
6 Western District of Wisconsin, in my presence and reduced  
7 to writing in accordance with my stenographic notes made  
8 at said time and place.

9 Dated this 21st day of October, 2019.

10  
11  
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13  
14  
15 \_\_\_\_\_ /s/

16 Cheryl A. Seeman, RMR, CRR  
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